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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 13

UNITED GAS PUBLIC SERVICE COMPANY,
APPELLANT,

vs.

STATE OF TEXAS, MRS. MIRIAM A. FERGUSON,
FORMER GOVERNOR OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

FILED MARCH 13, 1937.

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VOL. I

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[fol. 1] [Caption omitted]

[fol. 2]

IN 53RD JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

No. 52774

THE STATE OF TEXAS et al.

vs.

UNITED GAS PUBLIC SERVICE COMPANY

PLAINTIFFS' ORIGINAL PETITION—Filed July 26, 1933

To Said Honorable Court:

Come now the State of Texas and Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacity as members of and composing the Railroad Commission of Texas, Miriam A. Ferguson, in her official capacity as Governor of Texas, James V. Allred in his official capacity as Attorney General of Texas, the City of Laredo, a municipal corporation duly incorporated as such under the laws of the State of Texas and having its domicile in Webb County in said State, and Albert Martin, in his official capacity as Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, in their official capacity as members of and constituting and composing the City Council and governing body of the City of Laredo, and M. J. Raymond, in his official capacity as City Attorney of the City of Laredo, hereinafter called plaintiffs, complaining of United Gas Public Service Company, a corporation duly [fol. 3] incorporated under the laws of the State of Delaware and doing business in this State by virtue of a permit from the State of Texas and having its principal office in Harris County, Texas, and whose agent for service is J. A. Elkins of Houston, Harris County, Texas, upon whom service may be had, hereinafter called defendant.

I

Defendant is successor in title to Texas Border Gas Company and South Texas Gas Company. Defendant and its predecessors in title have owned and operated and defend-

ant now owns and operates a gas distribution system and distributes and sells natural gas and natural gas service within the limits of the City of Laredo and to the inhabitants thereof.

II

The City of Laredo is a city having a population in excess of twenty-five (25,000) thousand people and therefore has the power, under the laws of this State, by ordinance, to regulate the rates and compensation to be charged by defendant for furnishing natural gas and natural gas service to the inhabitants of said city.

[fol. 4]

III

On or about the 15th day of December, 1931, the City Council of the City of Laredo adopted an ordinance fixing and prescribing rates to be charged to the inhabitants of the City of Laredo for natural gas and natural gas service, a copy of which said ordinance is hereto attached, marked Exhibit "A", and made a part hereof and which, by its terms, was to become effective January 1, 1932. Thereafter, and before its effective date, said ordinance was superseded by an order of the Railroad Commission of Texas upon the filing with said Commission by the defendant of Gas Utilities Docket No. 49.

IV

In this connection it is shown the court that prior to the effective date of the aforesaid ordinance one of defendant's predecessors in title, Texas Border Gas Company, applied to the City Council of the City of Laredo for an increase in rates of natural gas being so supplied domestic consumers. Because the City failed to grant said application for said increase in said rates an appeal was taken to the [fol. 5] Railroad Commission of Texas in Gas Utilities Docket No. 63.

V

Gas Utilities Docket No. 49 and Gas Utilities Docket No. 63 were consolidated and heard together by the Railroad Commission on June 13, 1933. The Railroad Commission of Texas, out of said dockets, issued its order and opinion fixing and prescribing the rates and compensation to be charged by the defendant to domestic consumers of natural

gas within the City of Laredo from and after the first day of January, 1932 and ordering certain refunds paid to the City of Laredo for the benefit of domestic consumers within its boundaries which had been collected since January 1, 1932, a copy of which said order and opinion is hereto attached, marked Exhibit "B" and made a part hereof.

VI

The said order of the Commission marked Exhibit "B" prescribes a domestic rate within the City of Laredo of fifty-five (55¢) cents net per thousand cubic feet of natural gas with ten per cent penalty for non-payment of bills within ten days, and a minimum charge of $1.00 per month, [fol. 6] and is made retroactive to January 1, 1932. The rates so fixed by said order are just and reasonable.

VII

It is shown the court that since the year 1921, and at this time, the prevailing rate charged and collected by defendant and its predecessors in title within the City of Laredo for natural gas and natural gas service for domestic consumers has been and is now at the rate of seventy-five (75¢) cents per one thousand cubic feet of natural gas with ten per cent discount for prompt payment of bills, and a minimum charge of $1.00 per month, and that said rate now so charged is greatly in excess of the rate prescribed in the Commission's aforesaid order and is, therefore, illegal and in violation of said order and the laws of this State.

It is further shown that defendant has been violating said order since the same was entered by the Railroad Commission and is violating the same at this time and unless enjoined and restrained will continue to violate its terms and provisions.

VIII

In this connection plaintiffs show the court that the laws [fol. 7] of this State prescribe an orderly and valid procedure for the fixation and establishment of adequate and reasonable rates and charges for the distribution and sale of natural gas and natural gas service by gas utilities such as defendant; that Article 6058, Revised Civil Statutes, gives any gas utility the right to appeal from the order of a city government reducing any existing rate, to the Rail-

road Commission of Texas; that Article 6059, Revised Civil Statutes, gives any dissatisfied gas utility the right of appeal from an order of the Commission to any district court of competent jurisdiction in Travis County, and that such an action is given precedence over all other causes on said docket of a different nature and is required to be tried in said court as other civil causes; moreover, said article provides that gas utilities shall have the right of appeal to the appellate courts of this State, and such causes are given precedence in the appellate courts over all others of a different nature; such utilities are further given the right to supersede all such orders pending a final determination of same in the courts of this State; and by the terms of Article 6062 it is specifically provided that the enforcement of [fol. 8] any such order of the Commission may be stayed by such court by any affected gas utility pending a final determination of the appeal, and that any such utility shall not, during said time, be subject to the penalties prescribed by law for a failure to observe such order.

IX

It is further shown that notwithstanding defendant's remedies are adequate and complete in the courts of this State, and notwithstanding every constitutional and legal right to which it may be entitled is and will be fully safeguarded and protected in said court, the defendant, nevertheless, elected to and did, on or about the 29th day of June, 1933, file its bill of complaint in the District Court of the United States for the Southern District of Texas, Laredo Division, in a cause entitled, United Gas Public Service Company, plaintiff, v. Lon A. Smith, et al., defendants, No. 32 in Equity, and being a cause wherein your defendant is plaintiff and wherein each and all of your plaintiffs are defendants, except the State of Texas. Plaintiffs allege, however, in this connection that said suit is in [fol. 9] substance and effect a suit against the State of Texas as well as one against its officers and agents in their official capacities, and that in legal effect the parties to said action are identical.

X

It is further shown that in said action in said United States District Court, United Gas Public Service Company alleges in substance and effect that the order entered by the Railroad Commission of Texas fixed and prescribed a rate

confiscatory of its property used and useful in the public service, and alleged that said order is unconstitutional and upon said allegation a temporary restraining order out of said court enjoining and restraining your plaintiffs and each of them (except the State of Texas) from compelling or attempting to compel your defendant to observe said order of said Commission.

It is further shown that said writ issued out of said United States District Court and directed to your plaintiffs is returnable before three judges of the United States in the court room of said court at Houston, on the 31st day of July, 1933, at 10 a. m. and that your plaintiffs are commanded to appear and show cause, if any, why an interlocutory injunc-
[fol. 10] tion should not be issued further restraining and enjoining the enforcement of the Commission's order. It is further shown in this connection that said United Gas Public Service Company is asking in said cause for both an interlocutory and permanent injunction restraining your plaintiffs from enforcing the terms and provisions of said order of the Railroad Commission.

XI

Plaintiffs allege that the defendant is attempting to evade the laws of this State and the lawful order of the Railroad Commission of Texas fixing and prescribing rates and charges for the distribution and sale of natural gas within the limits of the City of Laredo, and that in charging a rate in excess of that prescribed by the Railroad Commission plaintiffs herein, and each of them, are suffering irreparable injury, and that there is no adequate remedy prescribed by the laws of this State which will protect the public interest involved and the rights of plaintiffs herein.

In this connection plaintiffs allege that the State of Texas has no adequate remedy at law to protect itself against the wrongs and injuries complained of herein, nor have the con-
[fol. 11] sumers of gas in the City of Laredo any adequate remedy to protect themselves against the wrongs and unlawful acts herein alleged and complained of, and that unless the relief herein sought is granted by this Honorable Court each and all of the plaintiffs will suffer irreparable injuries.

XII

Plaintiffs further show it is a charter duty of the defendant, as well as a duty imposed by the laws of this State, to

strictly observe and obey the lawful orders, rules and regulations of the Railroad Commission of Texas fixing and prescribing rates for the distribution and sale of natural gas and natural gas service; that the observance of said laws and of the orders of the Railroad Commission is made an absolute condition of their corporate existence; that the State of Texas and the public generally, and your plaintiffs, and the inhabitants of Laredo, particularly have a vital interest in the due and proper observance by the defendant of the laws of this State and of the orders, rules and regulations of the Railroad Commission fixing and prescribing rates, and that such orders are essentially for the benefit of the public generally; that such orders and the order involved [fol. 12] in this cause were intended to and do subserve the public interest, and that the duty of the defendant herein to observe said order is a public duty.

XIII

Plaintiffs are desirous of having the constitutional questions involved in the attack being made by United Gas Public Service Company upon the Commission's order heard and determined in the courts of this State, and to that end desire this court to enter a stay of proceedings in accordance with the provisions of Section 38, Title 28, U. S. C. A. to the end that all proceedings in the district courts of the United States will be stayed pending a final determination of this cause in the courts of this State.

XIV

This action is filed in this court in the nature of an appeal under the terms of Article 6059, Revised Civil Statutes, but such appeal is not taken because the plaintiffs herein are dissatisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of this Court and its venue to hear and finally determine the matters in controversy and to [fol. 13] enforce the said order if it should be determined to be valid upon final hearing.

Wherefore, Premises Considered, plaintiffs pray that defendant be cited in terms of law to appear and answer herein and that upon final trial hereof plaintiffs have judgment against defendant, and that defendant be permanently and perpetually enjoined and restrained from charging or col-

lecting any rates or charges for natural gas or natural gas service within the limits of the City of Laredo except those particular rates and charges duly authorized and promulgated by the Railroad Commission of Texas, and that defendant be restrained from charging any rate in excess of that prescribed by the Commission in its said order.

Plaintiffs further pray, however, that pending a final determination of this matter in the courts of this State that this Honorable Court enter an order staying all proceedings by the Railroad Commission of Texas, or any of its members or employees or by the City of Laredo, and any and all of its officers and agents, or by any other person or official of this State under the order promulgated by the Commission fixing and prescribing the rates to be charged for gas within the [fol. 14] limits of the City of Laredo.

Plaintiffs further pray that this Honorable Court enter an order staying all proceedings under the laws of this State and under the rules and regulations of the Railroad Commission, either for mandamus, mandatory injunction, injunction, damages, penalties, quo warranto or forfeiture of charter pending the determination of this suit by this Honorable Court.

Plaintiffs further pray for such other and further relief, special and general, in law and in equity, to which it may show itself justly entitled.

James V. Allred, Attorney General; Elbert Hooper, First Assistant Attorney General; Hicks, Dickson, Bobbitt & Lange, by Robert Lee Bobbitt, Edward H. Lange, Attorneys for Plaintiffs.

[fol. 15] *Duly sworn to by R. C. Granberry. Jurat omitted in printing.*

[fol. 16] EXHIBIT "A" OF PLAINTIFFS' ORIGINAL PETITION

An Ordinance

Whereas, about the year 1921 the Border Gas Company, predecessor of the Texas Border Gas Company, then holder of the franchise for the sale of natural gas within the City of Laredo, was charging and receiving a much lesser rate than that now imposed for the sale of natural gas and about that time, upon representation of its then president that the gas supply was being rapidly exhausted, said company was permitted, without Ordinance, but by sufferance to impose a

higher rate, said company representing and agreeing that if the gas supply should increase that the rates would be again reduced to a reasonable amount; and,

Whereas, since said time, said company and its successor have continued to exact the present high rate, granting no reduction; and

Whereas, the gas supply has sufficiently increased and is now such as to demand that said agreement be complied with and that a reasonable rate be prescribed and imposed;

Now, therefore, be it ordained by the city council of the City of Laredo:

Section 1

That a reasonable and fair price for the sale and delivery of natural gas to consumers within the City of Laredo is hereby declared to be:

(a) A reasonable and fair price to be charged and received for natural gas sold and delivered to domestic consumers thereof is hereby declared to be the sum of $.40 for each one thousand cubic feet as registered by the gas meter installed by the holder of the franchise for the sale and delivery of natural gas.

* * * * * * *

Section 2

All charges for gas consumed shall be collected monthly by the seller, bills therefor to be rendered to the consumers on the first day of each and every month after this Ordinance becomes effective. If any consumer pays for the gas used by him in the previous month on or before the tenth day of [fol. 17] the month after the use of such gas, he shall be entitled to a discount of ten per cent from the rates hereinabove fixed, but if he fails to pay therefor on or before the tenth day of the month following the consumption of such gas, he shall not be entitled to the discount herein allowed.

Section 3

The franchise holder for the sale and delivery of gas shall be entitled to demand a minimum charge of $1.00 each month from each consumer regardless of the amount of gas consumed if the charge for the gas consumed in any month should be less than the sum of $1.00.

* * * * * * *

Section 5

It is ordered that the rates herein fixed become effective on the 1st day of January, A. D. 1932, and remain in effect thereafter.

* * * * * * *

Passed and Approved on this the 15th day of December, A. D. 1931.

Mayor, City of Laredo.

Attest: —— ——, City Secretary.

[fol. 18] EXHIBIT "B" OF PLAINTIFFS' ORIGINAL PETITION

Before the Railroad Commission of Texas

Gas Utilities Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY from an Ordinance of the City of Laredo, Texas

Joined and Heard With

Gas Utilities Docket No. 63

In re the Appeal of TEXAS BORDER GAS COMPANY from the Failure and/or Refusal of the City of Laredo, Texas, to Grant it an Increase in Domestic Gas Rates

Heard October 4 to October 11, 1932—November 9 to November 14, 1932

Opinion and Order

By the Commission:

The City Council of the City of Laredo on December 15, 1931, enacted an ordinance which provides for the fixing of rates for natural gas, as follows:

40¢ per M. C. F. for domestic consumption;
12¢ per M. C. F. for industrial consumption;
30¢ per M. C. F. for hotel and restaurant consumption;
25¢ per M. C. F. for school, church and hospital consumption, and for use in gas engines.

[fol. 19] The ordinance further provides for a discount of 10% for payment of bills within ten days of their ren-

dition; and under its provisions, the ordinance became effective January 1, 1932.

At the time of the enactment of the ordinance, the prevailing rate for natural gas for domestic purposes (which rate had prevailed since the year 1921) was 75¢ per M. C. F. with a 10% discount for payment within 10 days, and a minimum monthly bill of $1.00. No fixed rates applied as to non-domestic consumers.

The Texas Border Gas Company, the Company furnishing natural gas to consumers within the limits of the City of Laredo, not being satisfied with the provisions of the aforesaid ordinance, filed its appeal with the Commission and posted the required supersedeas bond, all in accordance with the provisions of Articles 6058-6059 R. C. S. of Texas (1925). These Articles provide, in substance, that when a municipality has, by ordinance, reduced existing gas rates the utility affected by such ordinance may appeal to the Commission and perfect such appeal by the filing of a bond conditioned as may be required by the Commission; and that the Commission after a hearing of the matter make such order as it may deem just and [fol. 20] reasonable in the premises and that any party at interest, if dissatisfied with the order or orders so made by the Commission may have a further hearing in a District Court of Travis County, Texas.

Prior to the time set by the Commission for the hearing of this cause, the South Texas Gas Company, the Company owning and operating the transmission properties and transporting the gas sold to the Texas Border Gas Company at the Laredo City Gate, was made a party to the proceeding.

Subsequently, the Texas Border Gas Company filed its application with the governing body of the City of Laredo for an increase in rates of natural gas supplied to domestic consumers on the following scale:

$1.50 net per month, which $1.50 would entitle a consumer to use 1000 cubic feet of gas during such month;
.90 net per M. C. F. for the next 2000 cubic feet of gas used during such month;
.70 net per M. C. F. for all additional gas used, during such month;
Minimum monthly bill $1.50 net.

No action having been taken on this application by the City of Laredo, at the expiration of 60 days after its presentation, the Texas Border Gas Company took the [fol. 21] necessary steps to perfect its appeal to the Commission under the provisions of Article 6058 (supra).

The Commission thereupon entered its order consolidating the two appeals and set the hearing for October 4, 1932.

By agreement of the parties a rate of 5¢ per M. C. F. was stipulated as a fair and reasonable price of gas at the well.

By appropriate pleadings the United Gas Public Service Company, a Delaware Corporation, entered its appearance in both appeals, alleging in substance that it had acquired the properties of both the Texas Border Gas Company and South Texas Gas Company, and that it adopted the pleadings of both of the said Companies theretofore filed with the Commission.

The matters at issue were heard by the Commission in hearings held at Laredo from October 4 to October 11, and from November 9 to November 14, 1932 at which time both the Gas Company and the City presented their evidence before the Commission; every phase of the controversy was fully presented, resulting in a stenographic record of some fourteen hundred pages and of more than twenty [fol. 22] exhibits, containing several hundred pages; and subsequent to the conclusion of the hearing, counsel for both the Company and the City prepared and filed with the Commission exhaustive briefs, which were of particular aid to the Commission to arriving at a just and fair solution of the matters before it, in this cause.

Texas Border Gas Company. South Texas Gas Company.

Historical

The Texas Border Gas Company, a Texas Corporation, and its predecessor, the Border Gas Company have been distributing natural gas in the City of Laredo since the year 1909, under a twenty-five year franchise granted by the City in February, 1909. During the year 1910 the original Company (Border Gas Company) began and completed the construction of a transmission line from what was known as the Reiser Field, to the Laredo Gate, a distance of approximately 22 miles; during the same year it also constructed a distribution system in the City of Laredo.

In the year 1916, the transmission line was extended for a distance of approximately 26 miles to what is known as the Jennings Field; in the years 1922 and 23, an additional transmission line of some 24 miles was laid to the Carolina-Texas Field.

[fol. 23] From the year 1909 to April, 1928, the original Company, the Border Gas Company, owned and operated the producing, the transmission and the distribution systems, supplying natural gas to the consumers, in the City of Laredo. In the month of April, 1928, that portion of the properties comprising the distribution system was acquired by the Texas Border Gas Company; the Transmission system properties were, at the same time, acquired by the South Texas Gas Company; and the producing wells and other production property were taken over by the South Texas Production Company, which latter Company is not a party to these proceedings.

Inter-Related Companies

Texas Border Gas Company and South Texas Gas Company are operated as units of the United Gas Public Service Company, which latter Company is, in turn, a unit of the United Gas System. Both appellant Companies are under common stock ownership and are under the same common management and control.

Texas Border Gas Company is a distributor of natural gas not only in the City of Laredo but also in the surrounding territory, which includes a number of small communities situated in that vicinity.

All gas distributed by Texas Border Gas Company in [fol. 24] the City of Laredo is purchased by it from the South Texas Gas Company under the terms of a gate rate contract between the two companies, entered into on the 10th day of April, 1928, providing for the following scale of rates:

30¢ per M. C. F. for all gas sold and delivered to domestic consumers;

14¢ per M. C. F. for all gas sold and delivered to industrial consumers.

In view of the inter-related company operation and ownership, the gathering, transmission and distribution properties used and useful in serving the City of Laredo were appraised and valued as a combined property.

Statement of the Issues

The major questions which present themselves for determination by the Commission in this case are the following:

1. What is the present fair value of the properties of the Company, used and useful in serving the City of Laredo?

2. What is a fair and reasonable annual allowance for depreciation on the property of the Company, used and useful in serving the City of Laredo?

3. What is a reasonable rate of return for a company supplying natural gas in the City of Laredo?

[fol. 25] 4. What schedule of rates will yield that return?

Allocation

As the distributing company (Texas Border Gas Company) serves not only natural gas consumers in the City of Laredo, but also consumers in a number of other communities situated in the Laredo area, it becomes necessary to allocate to Laredo only that portion of the Company's property used and useful in serving the rate payers in such City.

The Company's engineer, Greene, applied a method of allocation under which he utilized certain percentages representing the ratio of the volume of gas in M. C. F. delivered to the Laredo City Gate, to the total volume of gas delivered within the Laredo district, including Laredo (71.29%); and the ratio of the volume of gas delivered to consumers outside the Laredo District, to the total volume of gas delivered to the Laredo City Gate (96.45%).

The City's Engineer, Elrod, utilized a weighted average per cent (83.18%), arrived at as an approximate mean between the two percentages used by the Company's Engineer, Greene.

As neither Consumers' Demand, nor Load Factor data was available in this case, we are of the opinion, from the [fol. 26] evidence before us, that the application of the weighted average per cent utilized by the City comes closest to producing a fair and correct allocation of the properties involved, especially, since the properties of the two companies are not being valued separately herein, but as a unit.

Present Fair Value, or Rate Base

Neither in statutory law nor in court decisions have we been able to find any definite, fixed rule, basis or formula for the determination of the present fair value of the property of a utility used and useful in serving the public.

While, it is true, as is contended for by the Company, that, it is the present fair value of the property that is to be determined, still, the application of the "reconstruction cost new" method alone, to the exclusion of other recognized methods and factors, would necessitate a dependence upon "that most unsatisfactory evidence, the testimony of expert witnesses employed by the parties."[1]

Ultimately, in all rate cases the rate making body finds that it must approach the question of "fair value" in the [fol. 27] light of the holding of the Supreme Court of the United States as set forth in the case of Smyth v. Ames, 169 U. S. 546; 42 L. Ed. 819, wherein the Court said:

"And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates as prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

The historical cost of the properties, which term necessarily embraces, (a) the original cost of construction, (b) the amount expended in permanent improvements, and (c) a comparison of the present with the original cost of construction, as enumerated in the Smith v. Ames case must, therefore, be given its proper place by the rate making body..

In the present case, the Company in adducing its evidence before the Commission relied solely upon the reconstruction cost new method, contending that, while histori-

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[1] Knoxville v. Knoxville Water Company, 212 U. S. Page 1; 53 L. Ed. 371.

cal cost may have a limited evidentiary value in rate cases, it has no proper place in the instant case, because the early records of the company were inadequately kept, and there-
[fol. 28] fore, provide no correct basis upon which to compute such cost.

The City, however, takes the position that the reconstruction cost new, as well as the historical cost methods are equally applicable; and adduced testimony at length, which we believe fully bears out its contention, namely, that both should be given due consideration by the Commission.

Elements of Value

The Company's Engineer, Greene, in his appraisal of the properties used and useful in serving the City of Laredo as of August 1, 1932, arrives at the following result:

Rate Base:	R. C. N.	R. C. N.—Less Depreciation
	$1,415,787	$1,231,601

The City's Engineer, Elrod, obtains the following results:

Rate Base:	R. C. N.	R. C. N.—Less Depreciation
	$1,029,155	$810,698

In addition, the City adduced evidence showing the depreciated historical cost of the properties as of July 31, 1932, to be $709,991.23.

The properties of the Company are divided into three groups: (a) Gathering system; (b) Transmission system, and (c) Distribution System.

[fol. 29]

Gathering System

The Company includes in its appraisal two gathering systems—one situated in the East Jennings Field and the other situated in the West Jennings Field. Its appraisal gives the total depreciated cost of the two systems as $15,868.

The City contends that the West Jennings gathering system is the only one of the two that may possibly be useful in serving Laredo and it includes such gathering system at a depreciated cost of $10,342; this accounts for the net difference of $5,526 between the Company's and the City's allowance for this item.

Viewed in the light of the evidence before us, the inclusion of the East Jennings Gathering System in the rate base herein is not justified.

Transmission System

The Company's appraisal includes an allowance of $635,230 (new) and $532,133 as the depreciated cost of its transmission system.

The City on the other hand allows $553,353 (new) and $383,960 as the depreciated cost of the transmission system, thus showing a difference between the two (in cost depreciated) of the sum of $148,173. Of this latter amount [fol. 30] $37,010 is accounted for in the omission by the City of the Aguilares-Oilton line and the remainder is the result of the difference in findings of per cent condition.

While the City includes an allowance, exclusive of telephone line, of $124,668 as the depreciated cost of that portion of the transmission lines extending from Pescadito Junction to the Jennings Field, a distance of approximately 26 miles, the record discloses that this line was used on only one day during the twelve months' period ending July 31, 1932, in transporting gas to Laredo; further, the condition of this line is such that it could neither safely nor profitably transport the necessary volume of gas to the City, and that if the Company's properties were reproduced, this section of the line would not, in our opinion, be necessary in transporting the supply of natural gas required by the City of Laredo.

Distribution System

The Company's exhibit makes an allowance of $563,994 (new) and $477,141 as depreciated cost, while the City allows $564,754 (new) and $460,199 as depreciated cost of this portion of the properties. The net difference of $16,942 is, with the exception of the small difference in the sum [fol. 31] of $760, attributable to the divergence of views of the engineers as to present per cent condition.

Working Cash

The City's Engineer, Elrod, allowed the Company for cash working capital, or working cash, the sum of $11,157, which figure was computed upon the basis of two months operating expenses less gas purchases. The Company's

Engineer, Greene, computed the amount claimed, $24,223, on the basis of 60 days operating expenses, plus prepaid accounts, gas purchases and a minimum bank balance. We believe that this item should be computed on the basis of 45 days operating expenses, plus the cost of purchased gas; although in the recent opinion of the Ohio Public Utilities Commission, in the case of Re: Columbus Gas & Fuel Company, P. U. R. 1933 A.337, the rate-making body in that case held that the working cash "should be limited to one and a half months rather than two months, and that the cost of gas purchased (from an affiliated Company) should be eliminated."

As both the City and the Company are in accord as to the sum allowable for Material and Supplies, this item of value is not at issue.

[fol. 32] Going Concern Value

Of all intangibles entering into the rate structure the item "going concern value", is manifestly the most elusive and consequently has been allowed in varying percentages under the facts of particular cases, and entirely disallowed in others.

That this item is an element of value, upon adequate proof, to be taken into consideration by the rate-making body in arriving at a fair and proper rate base, is generally recognized. However, in the giving of such requisite consideration it is not essential that the item be given a separate designation or description.

This phase of the question was passed upon by the Supreme Court of the United States in its recent decision in the case of Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California, — U. S. P. 77; L. Ed. —, (not yet officially reported), wherein the Court, speaking through Mr. Chief Justice Hughes, says:

"The record affords no adequate basis for criticizing the allowance made by the Commission for materials and supplies and working capital, and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern. The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element."

[fol. 33] The Company contends for an allowance of going concern value as follows:

(a) In connection with its gathering system, the sum of $3,122;

(b) In connection with its transmission system, the sum of $70,659; and

(c) In connection with its distribution system, the sum of $81,301; or, a total of $155,082.

The City on the other hand makes no separate allowance for this element of value in its appraisal, contending that its value was capitalized by the Company when it specifically included this item in its purchase cost of the original properties in the year 1910, and was so treated by the Company; further, that the elements entering into its value had been charged to operating expenses by the Company, and that any additional or remaining portion had been fully considered and allowed by it in the manner in which its engineers evaluated the property.

Accrued Depreciation (Per Cent Condition)

The amount of accrued depreciation is, or the per cent condition of the properties under consideration, was testified to at length by Engineers Elrod and Shaw for the City and by Engineers Greene and McGary for the Company. [fol. 34] The Company contends that the inspection,—or observation—method is the only method to be employed in determining the accrued depreciation or the per cent condition of its properties; and its Engineers, in determining the present per cent condition relied solely upon what is known as the inspection method.

On the other hand the City takes the position that, while the inspection method is of value in determining the amount of accrued depreciation such method cannot be singled out to the exclusion of all other recognized methods; and its engineers employed the inspection method, in combination with what is known as the age-life method of determining the present per cent condition of the properties.

A considerable portion of the distribution system of the Company's properties lies under pavement; all of the engineers testified that due to the impracticability of disturbing the pavements of the City's thoroughfares, no

actual physical inspections were made of the structures under pavement. It is evident then, that the determination of the per cent condition of the property lying under pavement, as made by the Company's engineers, was pure speculation, while on the other hand, the determination of the [fol.35] per cent condition of such property by the City's engineers was, to say the least, based upon a reasonable assumption—that of the age and probable life of such elements.

The largest single item of accrued Depreciation, as determined by the City's engineers, was in connection with the Pescadito-Jennings transmission line, laid 16 years prior to the date of the hearing. It was developed that this 6 inch steel line had not been adequately protected with enamel, or other coating, and that the line lay through a territory in which there were many "hot spots", or areas of soil of a highly corrosive nature, and that in these areas, the pipe was practically of zero value. The dollar difference in this one item alone, in the amounts of depreciation deducted by the Engineers for the Company and for the City is $53,289. If this difference were eliminated, the respective per cent conditions would be:

Company	84.1%
City	80.5%
Difference	3.6%

Engineer McGary's testimony disclosed that he had encountered only one of the many "hot spots" along this line; nor was Engineer McGary concerned about how many such "hot spots" there might be. While his methods of determining per cent condition may be used in highly technical [fol. 36] laboratory work, we are of the opinion that if they form the sole basis of the calculations made, they are very impracticable, in the field.

Engineers Elrod and Shaw testified as to the condition of the Pescadito-Jennings transmission line and concomitant structures from actual inspection, coupled with the consideration of the age of the pipe, the character of its protective coating, and the character of the soil in which it was laid.

After viewing the testimony of the respective Engineers, the methods employed by each, and the conditions encountered, we find that the over-all per cent condition of the properties is 78%.

Annual Allowance for Future Depreciation

The estimation of the annual rate of depreciation is of importance; however, a consideration of what rates have been allowed in other cases, while enlightening, is not of great value here, as each case is in some measure different from each other case, and depends upon the facts of the particular case. Since there is no established rule or formula upon which to proceed with certainty in the matter, we believe that the past experience of the company itself, affords a criterion that merits our consideration.

[fol. 37] The only evidence in the record of the past experience of the Company with respect to its actual requirements for retirements is provided by the City's Exhibit E. Here it is shown that, had an annual sum of equal to 2 per cent of the cost of the Companies' properties been set aside consistently it would have exceeded the actual requirements for retirements ($252,025) by the sum of $5,557. Also, that had such annual sum been accumulated at the rate of 5%, there would have been a surplus, over and above actual requirements, of $391,933.

While it is true that rate payers, although having contributed to a depreciation reserve far in excess of the utility's actual requirements, may not have such excess accumulation made applicable to future rates, nevertheless, the depreciation reserve so reflected by the Company's books and records may well be utilized by the Commission as a guide in determining the rate of depreciation sufficient to meet future needs.

The Supreme Court of the United States in the case of Smith v. Illinois Bell Telephone Company, 282 U. S. 133; 75 L. Ed. 255, speaking through Mr. Chief Justice Hughes, says:

[fol. 38] "While it has been held by this court that property paid for out of moneys received for past services belongs to the Company, and that the property represented by the credit balances in the reserve for depreciation cannot be used to support the imposition of a confiscatory rate (Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23; 70 L. Ed. 808; P. U. R. 1926 C. 740; 46 Sup. Ct. Rep. 363), it is evident that past experience is an indication of the company's requirements for the future. The recognition of the ownership of the property represented by the reserve does

not make it necessary to allow similar accumulations to go on if experience shows that these are excessive."

Engineer Elrod, for the City, expressed the opinion that an allowance of 2 per cent per annum represents a sufficient sum for future annual depreciation for the Company.

Engineer Greene, for the company, testified that the Company should be allowed depreciation at the rate of 5 per cent on the distribution system, 6 per cent on the transmission system; and 10 per cent on the gathering system.

It is obvious that the rates of depreciation on property units installed within the past few years, and on those units to be installed in the future, need not be as large as the rates that were applicable previously due to the fact that more permanent and improved materials and appliances have been, and are being, and will be used, than was the case in the past. For instance, the greater portion of all pipe lines, in- [fol. 39] volved here, laid prior to 1916, was not protected with covering. Of recent years, no unprotected pipe line has been laid, nor is it probable that any such pipe will ever be laid again. Scientific discoveries and improved materials and better knowledge of methods are continually reducing the cost of depreciation.

In view of the conflicting testimony as to the physical condition of certain portions of the properties, we are of the opinion that a rate of depreciation of 2 per cent may be too low for application in this particular case. On the other hand, we believe that the rates of five, six and ten per cent, respectively, as asked for by the Company are far in excess of its future needs. Therefore, in the light of the record before us, we are fixing the annual depreciation rate at 3 per cent which we consider ample to meet the Company's future requirements.

General Overheads

The allowances claimed for general overheads by this Company, and by the City respectively, are as follows:

	Company	City
Preliminary Organization	$35,505	$18,371
Engineering and Superintendence	50,124	17,408
Administration and Legal	33,831	10,445
Taxes during Construction	6,257	4,593
Interest during Construction	48,581	24,371
Total	$174,298	$75,188

[fol. 40] Claims for these items are based on assumptions and calculations of both the Company's and City's engineers. The amount contended for by the Company is approximately 19.96 per cent of its appraised value of the physical properties, while the amount set up by the City is 10 per cent of the City's total, as reflected in its appraisal of the physical properties.

Available Revenue

The Company presented a "set up" (Ex. 4) of operating revenues and expenses for the 12 months' period ending July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar "set up" (Ex. L) covering the years ending June 30, 1929, 1930, and 1931, and for the year ending July 31, 1932,—a period of four years; it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken, alone as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The [fol. 41] City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken as the test period, nor should an average of these two years be taken.

Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the 3 years 1930, 1931, and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year 1930.

Therefore, in the light of ample lawful precedent for the taking of an average of 4 successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of

revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932 constitutes the test period for the computa-
[fol. 42] tion of the rate structure upon which a fair return is to be predicated.

The number of consumers of natural gas in the City of Laredo, and the volume of gas consumed is reflected in the Company's sworn reports on file with the Commission for the years 1929, 1930, 1931 and 1932.

The Company contends for an allowance of 1 cent per M. C. F. of gas purchased in the Carolina-Texas Field, as a gathering charge. The gathering lines in this field are not the property of the Company, but are the property of the Southern Gas Company, an affiliate. The basis of the Company's contention for the 1 cent gathering charge is a contract (Ex. 10) between it and its affiliate company, which contract stipulates a charge of 1 cent per M. C. F. for the use of its gathering lines and facilities.

The Company witness Abernathy, its Superintendent of Transportation, testified that the reasonable cost of constructing this gathering line and facilities would be approximately $25,000. On the basis of the volume of gas purchased for Laredo (as per 5 year average = 730,404 M. C. F.) assuming that all gas purchased comes from the Carolina-Texas Field, (although, included in the City's
[fol. 43] Rate Base is a sum of $10,342 for the present value of a gathering system in the West Jennings Field), this gathering charge would amount to $7,304 per annum. As a comparison, a fair return on the cost new of this Carolina-Texas gathering system (based on 7% return 3% depreciation, plus an approximate 10% operating charge) is 20%, or $5,000. Of this total, however, only approximately $4,000 would be allocable to Laredo; obviously, the fair return on the present depreciated value of the existing gathering system would be considerably less. In the light of the evidence herein, we are of the opinion that if the 1 cent gathering charge contract had been made at "arms length", and not by two affiliated companies, a reasonable gathering charge would very probably have been set at ¼ of one cent per M. C. F. rather than at 1 cent. In view of the circumstances in connection with this particular transaction, we are of the opinion that a gathering charge of ½ of 1 cent per M. C. F. of gas purchased from the Carolina-Texas Field is a fair charge allowable in connection with the computation of the rate structure herein.

The Company includes in its operating statement a charge designated "pipe line rental" covering an alleged expense incurred by the Company to an affiliate for the use of a sec-
[fol. 44] tion of gas transmission line situated in the East Jennings Field. The City takes the position that this item is not properly chargeable to the Laredo rate payers as it is not being used to transport gas to Laredo, nor is it necessary to such transportation. The record, in our opinion, does not justify the inclusion of this item as chargeable against the rate payers in the City of Laredo.

The Company also contends for the allowance as proper operating expense of certain amounts claimed for management fees, loss on bad debts, advertising, general office expense (prorated between interconnected companies), special payrolls of the United Gas Company (the parent Company), general expense (prorated with Southern Gas Company, an affiliate company), maintenance of general structure, testing mains for leaks, Laredo Rate Case expense, and Donations.

It is the contention of the City, on the other hand, that such allowance in favor of the Company as an operating charge is not properly supported under the facts and circumcumstances in this case, and the City asks for its elimination in the computation of the fair rate of return.

From the facts reflected by the record before us, we find that the Company has not shown itself entitled to the allow-
[fol. 45] ances which it asks the Commission to make in this regard. However, we feel that reasonable compensation should be allowed the Company in connection with loss on bad debts, general office expense, advertising, maintenance of general structures, donations, testing mains for leaks, and the Laredo Rate Case expense (amortized over a period of ten years), and we have made allowance for all such, in arriving at a just and fair rate of return in this case.

In arriving at a decision and making an order herein that is deemed by the Commission to be just and reasonable, we have carefully and fully considered all the evidence presented and all the facts and circumstances reflected by the record herein; and upon giving due consideration to all the elements of value inhering in the property involved in this proceeding, have valued the Company's properties as an operating concern, with business attached; have made ample allowance for materials and supplies, working cash, and general overheads; and have included in such value the

Pescadito-Jennings Transmission Line and the West Jennings Gathering System (although the record clearly discloses that these last two named property items are neither being used, nor are they necessary as standby equipment), and we find the present fair value of the properties of the Company used, and useful in the gathering, transporting [fol. 46] and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000.

The said total present value of the properties thus found by us exceeds substantially the original or historical cost thereof, as shown by the record in this case.

In view of the facts and circumstances hereinabove enumerated and because of the valuation of the properties as herein stated, we find that no additional and separate allowance for going concern value is justified in this case, and no such additional and separate item is allowed.

We find that an annual rate of return equal to seven per cent (7%) of the present fair value of the properties as herein found is adequate.

We find that the following schedule of rates is just and reasonable herein, and that its application will produce a net return in excess of seven per cent (7%) per annum on the present fair value of the properties, after provision for operations and reserve for depreciation.

Rate Schedule

On natural gas for all domestic uses, 55 cents, net, Per M. C. F.

Minimum bill per user per month—$1.00.

[fol. 47] Penalty for non-payment within 10 days from the date of rendition of bill, 10% of the amount thereof.

The proper order will be issued putting into effect the above findings.

Order

In the above numbered and entitled cause, the Commission having heard the evidence presented by all parties at interest pertaining to the matters and things therein involved, and having now carefully and duly considered the same, and having filed in this case its opinion in writing setting forth its conclusions and findings, which said opinion is hereby made a part of this order, it is

Ordered, Adjudged and Decreed by the Railroad Commission of Texas, that the rates to be charged to the con-

sumers of Natural Gas within the City of Laredo, Texas, from and after the 1st day of January, A. D. 1932, shall be as follows:

For natural gas for domestic use, 55 cents per M. C. F.

Minimum bill per user per month—$1.00.

Penalty for non-payment of bills within 10 days from date of rendition, 10% of the amount thereof.

It is Further Ordered By the Railroad Commission of Texas that no fixed charge be set for the sale of natural [fol. 48] gas to non-domestic consumers in the City of Laredo.

It is Further Ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the city of Laredo for the benefit of the domestic gas consumers the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order.

It is Further Ordered, Adjudged and Decreed by the Railroad Commission of Texas that the application of the Texas Border Gas Company filed herein on the 16th day of September, 1932, (Gas Utility Docket No. 63), for an increase in the rates to be charged to domestic consumers of natural gas within the City of Laredo, Texas, be, and the same is hereby denied.

Dated at Austin, Texas this the 13th day of June, A. D., 1933.

Railroad Commission of Texas by (Signed) Lon A. Smith, Chairman; (Signed) C. V. Terrell, Ernest O. Thompson, Commissioners.

Attest: C. F. Petet, Secretary. (Seal.)

[File endorsement on cover of plaintiffs' petition omitted.]

[fol. 49] In District Court of Travis County

[Title omitted]

Order Staying Proceedings—July 26, 1933

On this the 26th day of July, 1933, came on to be heard the motion of the plaintiffs in the above entitled and numbered cause for a stay of all proceedings under the order

of the Railroad Commission of Texas, dated June 13, 1933, fixing and prescribing the rates and charges to be collected by United Gas Public Service Company for natural gas and natural gas service within the City of Laredo, Texas; and all proceedings in connection therewith under the laws of this State and under the rules and regulations of the Railroad Commission; and the Court, having considered said motion and the facts alleged in connection therewith, is of the opinion that the same should be granted.

It is therefore Ordered by the Court that all proceedings against defendant, United Gas Public Service Company under and by virtue of the order entered by the Railroad Commission of Texas on June 13, 1933, fixing and prescribing rates to be charged for natural gas and natural gas service within the limits of the City of Laredo, and all pro- [fol. 50] ceedings under and by virtue of the laws of this State and the rules and regulations of the Railroad Commission of Texas, be and the same are hereby stayed pending determination in this court of the matters and controversies involved in this cause.

It is further Ordered that the Railroad Commission of Texas and Lon A. Smith, C. V. Terrell, and Ernest O. Thompson, and Miriam A. Ferguson, Governor of Texas, and James V. Allred, Attorney General of Texas, and the City of Laredo, and Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, members of and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, or any other department, officer, agent, servant or employee, and all other persons in this State, shall refrain from instituting or prosecuting any proceedings against defendant, United Gas Public Service Company on account of said order of said Railroad Commission entered on June 13, 1933, or from attempting to enforce any of the duties, obligations and requirements imposed upon the defendant herein by said order or by the laws of this State, whether by suit or mandamus, mandatory injunction, in- [fol. 51] junction, penalties, damages, quo warranto, forfeiture or receivership, or for any other penalties pending a decision by this Court of the matters and things involved in this suit, and all said State officials, their agents, servants and employees and all other persons shall refrain from enforcing or attempting to enforce the terms and provisions

of said order of the Railroad Commission against the defendant until the determination of this cause in this court.

It is further ordered that the defendant herein shall not be subjected to any penalties, damages or forfeitures on account of its failure to comply with the terms and provisions of the said order of the Railroad Commission entered on June 13, 1933, or on account of any provisions of the statutes of this State where such failure to comply with the same has taken or takes place before the final determination of this suit.

C. A. Wheeler, Judge, 53rd District Court of Travis County, Texas.

[File endorsement omitted.]

[fol. 52] IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, LAREDO DIVISION

In Equity. No. 32

UNITED GAS PUBLIC SERVICE COMPANY, Plaintiff,

v.

LON A. SMITH et al., Defendants

STAY ORDER—Filed August 7, 1933

On this the first day of August, 1933, came on to be heard the application of United Gas Public Service Company, plaintiff, for an interlocutory injunction in the above entitled and numbered cause before a court of three judges duly called and assembled in accordance with Section 266 of the Judicial Code of the United States as amended. All defendants appeared and answered subject to their motion for stay of proceedings and other motions on file herein. Thereupon the motion of defendants for stay of proceedings was first heard and considered.

* * * * * * *

And the defendants herein having announced in open [fol. 53] court, by and through Elbert Hooper, First Assistant Attorney General, the counsel of record for said defendants and by whom said defendants appeared in this court, that said defendants, the State of Texas, Railroad Commission of Texas, Lon A. Smith, C. V. Terrell, and Ernest O. Thompson, individual members of said Railroad

Commission of Texas, Miriam A. Ferguson, Governor of the State of Texas, and James V. Allred, Attorney General of Texas, and the City of Laredo, Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, constituting and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, and each and all of them, did not desire to enforce, and had no intention of enforcing or attempting to enforce against the plaintiff herein, United Gas Public Service Company, any of the pains, penalties or forfeitures provided for by law by reason of any violation of the provisions and requirements of said order by said United Gas Public Service Company committed or done by said plaintiff herein at any time before the final determination of said cause No. 52,774, on the docket of the fifty-third district Court of Travis County, Texas, and [fol. 54] said Assistant Attorney General for said defendants herein announced in open court that said defendants would consent and agree to an injunction by this Court entered in this cause restraining said defendants and each of them from at any time enforcing or attempting to enforce against the plaintiff herein, United Gas Public Service Company, any of the pains, penalties or forfeitures of said act that may arise or accrue because of, or by any reason of any violation of the provisions and requirements of said order by plaintiff herein committed or done herein by the plaintiff herein, United Gas Public Service Company, at any time prior to final determination of said Cause No. 52,774; and,

It appearing to the Court that by reason of said stay order entered in said cause No. 52,774 in the Fifty-third District Court of Travis County, Texas, and by reason of the aforesaid statements of the defendants herein in open court, by and through Elbert Hooper, First Assistant Attorney General, that the plaintiff herein, United Gas Public Service Company, is fully protected from the imposition of any and all pains, penalties and forfeitures provided by said act and arising by reason of the violation of any of the provisions and requirements of said act by the [fol. 55] plaintiff, United Gas Public Service Company, done at any time prior to the final determination of said cause No. 52,774 on the docket of said State district court, and that upon the entry of an interlocutory injunction in

this cause in compliance with the consent statements of said Assistant Attorney General, Elbert Hooper, and of the stay order of this court, the requirements of Section 266, Judicial Code (28 U. S. C. A. Sec. 380) will be complied with.

It is therefore, Ordered, Adjudged and Decreed that the defendants, the State of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, constituting and composing the Railroad Commission of Texas, Miriam A. Ferguson, Governor of the State of Texas, and James V. Allred, Attorney General, and the City of Laredo, Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, and B. Salinas constituting and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, and all of the assistants, agents, attorneys and representatives of such defendants be, and each of them is hereby restrained and enjoined from en- [fol. 56] forcing or attempting to enforce by any means or methods against the plaintiff herein, United Gas Public Service Company, said Order of the Railroad Commission of Texas, or any of the pains, penalties or forfeitures provided by law for any such violation of an order of said Commission by reason of the violation of any of the provisions and requirements of said order, or committed by the plaintiff, United Gas Public Service Company at any time prior to final judgment in cause No. 52,774 on the docket of the Fifty-Third District Court of Travis County, Texas.

It is further Ordered that all proceedings in this cause shall be stayed in this court pending the final determination of cause styled the State of Texas et al v. United Gas Public Service Company, No. 52,774 on the docket of the Fifty-Third District Court of Travis County, Texas; however jurisdiction is hereby retained in this court to enter such other and further orders upon the motion of either party necessary to protect the jurisdiction of this court or to protect the rights of any party herein,

J. C. Hutcheson, Jr., United States Circuit Judge.
T. M. Kennerly, United States District Judge.
William I. Grubb, United States District Judge.

[File endorsement omitted.]

[fol. 57] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER—Filed March 5, 1934

Comes United Gas Public Service Company, defendant, and without waiving its pleas heretofore filed herein and still insisting on such pleas and with leave of court first had and obtained, filed this its First Amended Original Answer in lieu of its Original Answer heretofore filed herein and says:

A.

* * * * * * *

2. Defendant demurs and excepts to plaintiffs' said petition and says that the same is insufficient in law and in equity to support a final judgment for injunction as prayed therein, because:

(a) It appears from said pleadings that said gas rate sought to be enforced was unlawfully fixed, in that the same is not supported by any or any legally sufficient findings of fact from the evidence in the record of the hearing before the commission.

* * * * * * *

[fol. 58] (c) It appears from said pleadings that the opinion and order of the Commission purporting to support and promulgate the $0.55 rate sought to be imposed here are unenforceable and are repugnant to defendant's rights, in that the same do not contain the findings of fact requisite and legally sufficient to support the reasonableness and validity thereof.

Plaintiff, therefore, prays that each ground of demurrer and exception above set forth be sustained.

* * * * * * *

4. Defendant excepts and demurs to the joinder, as plaintiffs in this cause, of the State of Texas, Miriam A. Ferguson, in her official capacity as Governor of Texas, and James V. Allred in his official capacity as Attorney General of Texas, because it appears from plaintiffs' said

petition as a matter of law that the parties last above named are neither necessary or proper parties plaintiff in this cause, singly or collectively, individually or in their official capacities. Defendant, therefore prays that this exception and demurrer be sustained, that the suit of the parties plain-
[fol. 59] tiff last above mentioned be abated and that all parts of plaintiffs' said petition naming said last named parties as plaintiff be stricken.

* * * * * * *

C

* * * * * * *

Answering further if required, defendant United Gas Public Service Company says:

I

Since about 1910, defendant and its predecessors in title have owned and operated a natural gas distribution system in the City of Laredo, Texas, and have since supplied and furnished natural gas and natural gas service to the inhabitants of said City. Since about 1921, the established rates charged and collected by defendant and its predecessors in title for natural gas served for domestic use have been $0.75 per MCF., 10% discount for prompt payment of bills,
[fol. 60] minimum bill $1.00 per month. On December 15, 1931, the City Council of the City of Laredo enacted an ordinance prescribing the rates for natural gas and natural gas service in Laredo, a copy of which ordinance is attached to plaintiffs' petition and marked Exhibit "A". Prior to January 1, 1932, an appeal from such ordinance was taken to the Railroad Commission of Texas, pursuant to Article 6058, Revised Statutes of Texas, 1925. This appeal became Gas Utilities Docket No. 49. Upon the filing of a bond the Railroad Commission entered an order in such appeal suspending and superseding said ordinance of the City of Laredo and ever since said time defendant has charged and collected the existing rate above set forth, which will be sometime described herein as the $0.75 rate.

In June, 1932, defendant's immediate predecessor in title to the above described property made application to the City Council of the City of Laredo for an increase in domestic rates, and upon the failure of the City of Laredo to grant such application and/or take any action with ref-

erence thereto, an appeal was taken to the Railroad Commission of Texas pursuant to said Article 6058, which appeal became Gas Utilities Docket No. 63.

[fol. 61] The Railroad Commission of Texas consolidated Gas Utilities Dockets Nos. 49 and 63 for hearing. A hearing was held with respect thereto in October and November, 1932, and full testimony was given with respect to defendant's natural gas gathering, transmission and distribution system properties and the value thereof used and useful to serve natural gas and furnish natural gas to and within the City of Laredo and with respect to the gross revenues, operating expenses and the net operating revenue being yielded by existing rates. All proceedings and testimony in such hearing were recorded and by prayer and motion contained in the record of such hearing, defendant requested the Commission to make full and specific findings of fact from the testimony in such record in support of any order made by the Commission therein. On June 13, 1933, without notice to this defendant, the Commission entered and promulgated the opinion and order attached to plaintiffs' petition and marked Exhibit "B", fixing a rate of $0.55 per MCF for domestic gas in the City of Laredo retroactive to January 1, 1932, and made said opinion and order and said $0.55 rate immediately operative. June 29, 1933, United Gas Public Service Company filed suit in the District Court of the United States for the [fol. 62] Southern District of Texas, Laredo Division, which suit is styled United Gas Public Service Company v. Lon A. Smith, et al, No. 32 in Equity, and said court, upon the filing of a bond as required by law, issued a temporary restraining order enjoining and restraining the members of the Railroad Commission and the city officials of the City of Laredo from compelling or attempting to compel defendant to observe the Commission's said order and from compelling or attempting to compel defendant to charge the $0.55 rate prescribed in such opinion and order. August 1, 1933, a court of three United States Judges in said cause styled United Gas Public Service Company v. Lon A. Smith, No. 32 in Equity on the docket of the District Court of the United States for the Southern District of Texas, Laredo Division, entered its order enjoining the members of the Railroad Commission and the officials of the City of Laredo

from enforcing or attempting to enforce the Commission's said order and said $0.55 rate until final judgment in this cause. Because of the facts above shown the said $0.75 rate has been in effect in Laredo at all times since 1921 and at all times material to this suit, and such $0.75 rate is now in effect, and the gross revenue received by defendant from domestic gas consumers in Laredo, at all times [fol. 63] herein alleged, have been the gross revenues produced and yielded by said $0.75 rate.

II

The following descriptive terms will sometimes be used herein to have the following meanings:

(a) Existing domestic rate or $0.75 rate to mean the domestic gas rate of $0.75 per MCF., 10% discount for prompt payment of bills, minimum monthly bill $1.00.

(b) Rate deduction ordinance to mean the said ordinance of the City of Laredo effective January 1, 1932.

(c) $0.55 rate to mean the domestic gas rate for Laredo provided in the Commission's order of June 13, 1933, which order is a part of Exhibit "B" of plaintiffs' petition.

(d) City to mean the City of Laredo and its officials.

(e) Company to mean United Gas Public Service Company and its predecessors in title to the natural gas gathering, transmission and distribution property serving gas in Laredo.

(f) Property to mean the natural gas gathering, transmission and distribution property and equipment and [fol. 64] portions thereof used and useful in gathering, transporting and distributing the natural gas furnished by Company in the City of Laredo.

(g) Operating revenues to mean the gross revenues derived by Company from sales of gas in the City of Laredo, exclusive of revenues derived from merchandise sales.

(h) Operating expenses to mean the costs incurred in operating Company's said property, exclusive of any costs of merchandising and jobbing, and exclusive of any charges for reserve for retirements and replacements (depreciation), but including gas at well mouth computed at $0.05

per MCF, as stipulated between the City and Company in the proceedings before the Commission.

(i) Net operating revenue to mean the difference between Laredo operating revenues and operating expenses and also to mean the amount available to provide accruals to reserve for retirement and replacements and return on property value.

(j) The Commission's rate base to mean the amount of $885,000.00 found by the Commission in its opinion of June 13, 1933 to be the present fair value of the Company's property.

[fol. 65] (k) The present fair value of Company's property to mean the value of $1,225,000.00 claimed by Company to be the minimum fair value of its said property during 1932 and the first six months of 1933, but not including any amount for the increase in value of such property since June, 1933.

III

The said $0.55 rate, and the opinion and order of the Railroad Commission purporting to support and promulgate such rate are wholly void and cannot be enforced in this suit because of the following facts:

(a) It appears from the face of such opinion and order that the conclusion of the Commission that the application of such $0.55 rate will produce a net return in excess of seven (7%) per cent per annum on a value of $885,000, after payment of all costs of operation and setting aside three (3%) per cent per annum in a reserve for depreciation, is wholly unsupported by the findings of fact made in such opinion and order. Such conclusion is likewise unsupported by any evidence in the record before the Commission.

(b) In the event it should be found that a proper con-[fol. 66] struction of such opinion and order shows that the Commission fixed said $0.55 rate by the application of the average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932 to a value of $885,000, then such method of determining such rate is unlawful and erroneous and renders such rate unenforceable. Said opinion and order show and the facts as shown by the record

are that gross and net revenues for both the fiscal years 1932 and 1931 were substantially below those in prior years, and that there had been a material change for the worse in business and economic conditions which had caused a serious decline in such revenues. The averaging of the higher gross and net revenues in the fiscal years 1929, 1930 and 1931, with the greatly reduced revenues obtainable and received under business conditions prevailing in 1932, and the use of such four year average as a test for the seven (7%) per cent rate of return fixed by the Commission, necessarily resulted in the fixing of a rate which did not yield seven (7%) per cent for return in 1932, and employed operating results in prior years as a means of imposing confiscatory rates from January 1, 1932. By the use of the proportion between net operating revenues received in the three years prior to 1932 and fair value found at prices [fol. 67] prevailing in 1932, the Commission failed to give any consideration to prices of labor and materials necessary for the reconstruction of defendant's property prevailing in such prior years.

Hence defendant says that said $0.55 rate is unlawful and void and that said opinion and order are unenforceable and should be set aside.

* * * * * * *

VIII

The opinion and order of the Commission made the basis of this suit to enforce said $0.55 rate, and said rate, are each contrary to law and unenforceable by reason of the following facts, and for lack of findings of the Commission from the evidence in the record supporting its action in connection therewith:

* * * * * * *

(b) The Commission, in finding that 3% per annum is a reasonable amount to accrue as a reserve for retirements and replacements (depreciation), has based such finding upon testimony showing that if 2% per annum had been set aside annually from the time the first units of property were installed, the accruals in the reserve would have [fol. 68] equaled charges to the reserve as of the date of the inquiry. The undisputed testimony in the record shows that large amounts of property have been added from year

to year and that a very substantial amount of such property had been installed within the ten years next before the date of the inquiry. This being the state of the evidence in the record before the Commission, the method employed by it in determining a proper annual reserve accrual is arbitrary, capricious and erroneous.

* * * * * * *

VIII

The four fiscal years referred to in the opinion and order made the basis of this suit extend back to July 1, 1928, being the three twelve months periods ended respectively June 30, 1929, June 30, 1930, June 30, 1931 and the twelve months ended July, 1932. Prior to January 1, 1932, defendant sold large quantities of gas to and received substantial revenues from Central Power and Light Company for the use of its electric generating plant in Laredo, and Motor Fuel Products Company for the use of its oil refinery. By 1932, Motor Fuel Products Company had [fol. 69] become insolvent, discontinued operations and has since partly dismantled its plant, and Central Power and Light Company had discontinued operation of its said electric plant except for occasional stand-by and emergency service. For the future, the regular operation of such plant will not be resumed and such plant will be used for stand-by service only, and Laredo is now receiving electric energy from the more modern and efficient plants of said Company located at points other than Laredo on said company's electric transmission system.

The amounts received by the Company from the Central Power and Light Company and Motor Fuel Products Company for gas sold to these two consumers during the four fiscal years above mentioned were as follows:

For Twelve Months Ended	Amount Received From These Two Consumers
June 30, 1929	$68,188.69
June 30, 1930	91,603.56
June 30, 1931	56,415.13
July 31, 1932	15,398.30
Total	$231,605.68

Average per year—$57,901.42.

Subsequent to July 31, 1932, and up to the present time the revenues received from said two consumers have con-
[fol. 70] tinued to decline until at the present time said two consumers have entirely discontinued the purchase and use of gas in Laredo, except in occasional and nominal amounts, and will not resume the purchase of gas in substantial quantities in the future. The amounts received by defend-ant from gas sales to these two consumers for the following periods have been:

For Twelve Months Ended	Amount Received From Said Two Consumers	
October 31, 1932	$12,038.20	
December 31, 1932	8,789.40	
March 31, 1933	4,340.80	
July 31, 1933	2,155.00	
October 31, 1933	51.20	From Central Power & Light Company
December 31, 1933	54.40	From Central Power & Light Company

By averaging gross and net operating revenues for the four fiscal years above set forth, the Commission has not only employed, in fixing said $0.55 rate, defendant's other revenues received in prior periods under conditions which, as found by the Commission, were substantially and materially different from those existing at the time of the in-
[fol. 71] quiry, but has erroneously assumed that gross revenues will be received from the two consumers above named amounting to approximately $58,000 per year in 1932 and subsequent years. As above shown, defendant received from these consumers $8,789.40 in 1932 and $54.40 in 1933, and will receive nothing or only nominal amounts therefrom in the future.

The method thus employed by the Commission in fixing the $0.55 rate is without support in the record and is contrary to law and equity, in that the Commission has employed earnings in prior years in an attempt to sustain and as a means of imposing and enforcing confiscatory rates for 1932 and for the future, and because the Commission has given controlling effect to operating results in prior years which by reason of changed conditions furnish no adequate criterion of the revenues obtained and obtainable during the period said $0.55 rate is made effective; and in that, by applying revenues obtained in prior years and under materially different conditions to fair value

found as of 1932 as a means of determining the percentages available for return and reserve accruals from and after January 1, 1932, the Commission has failed to give proper consideration to the greatly enhanced costs of construction [fol. 72] prevailing in the prior years during which such revenues were earned.

D

IX

The reproduction cost of Company's said property throughout 1932, and during the first six months of 1933, was not less than $1,439,525.00. Due to recent rise in the price of labor and material, said property could not be reproduced at the present time for such amount. The reproduction cost new less depreciation of said property throughout 1932, and the first six months of 1933, was not less than $1,252,828.00. The historical cost of said property exceeds $1,200,000. The present fair value of such property exceeds $1,225,000.00.

At existing rates, including the $0.75 domestic rate, defendant's operating revenues from sales of gas in Laredo and defendant's net operating revenue were, as follows:

Results of Operation at $0.75 Rate

Twelve Months Ended	Operating Revenues	Operating Expenses	Net Operating Revenue
March 1932	$204,821.21	$134,266.51	$70,554.70
[fol. 73] July, 1932	194,524.57	127,414.62	67,109.95
October, 1932	185,970.95	130,716,73	55,254.22
December, 1932	183,777.44	125,001.40	58,776.01
March, 1933	179,792.15	127,676.53	52,115.62
July, 1933	170,370.32	128,252.00	42,118.32
October, 1933	166,002.43	125,052.96	40,949.47
December, 1933	158,753.64	123,040.69	35,712.95

In its opinion and order of June 13, 1933, the Railroad Commission found that three (3%) per cent per annum of the value of Company's property was the proper amount to set aside annually in a reserve for retirements and replacements. The Company denies that such amount is adequate or sufficient. However, if three (3%) per cent be taken as the proper annual accrual for such reserve, the net amounts remaining are as follows:

(a) At existing domestic rates, after deducting from net operating revenue three (3%) per cent of $1,225,000.00, the net amounts remaining for return from Laredo operations for the following periods are:

[fol. 74] At $0.75 Rate

For the 12 Months Ended	Per Cent of $1,225,000.00
March, 1932	2.76%
July, 1932	2.48%
October, 1932	1.51%
December, 1932	1.80%
March, 1933	1.25%
July, 1933	0.44%
October, 1933	0.37%
December, 1933	Deficit of $1,037.05

(b) At existing rates, after deducting from net operating revenues three (3%) per cent of $885,000.00, the net amounts remaining for return from Laredo operations are as follows:

At $0.75 Rate

For the 12 Months Ended	Per Cent of $885,000.00
March, 1932	4.97%
July, 1932	4.58%
October, 1932	3.24%
December, 1932	3.64%
March, 1933	2.89%
[fol. 75] July, 1933	1.76%
October, 1933	1.67%
December, 1933	1.1 %

By reason of the above and foregoing facts, defendant says that the existing $0.75 rate, since February, 1931, has not yielded a reasonable return on the fair value of the defendant's property used and useful to render the service, and does not now yield and produce such a reasonable return. Such $0.75 rate, when sought to be imposed by public authority, is confiscatory. The Railroad Commission and the City of Laredo are without power and lawful authority to compel this defendant to furnish gas and gas service in Laredo at any rate which yields less than a reasonable rate of net return on the fair value of defendant's property, and the action of the Commission, in ordering defendant to

charge said $0.55 rate in Laredo in the future, and put the same into effect retroactively from January 1, 1932, is unlawful and void, and in violation of defendant's rights secured by the Constitutions of the United States and of the State of Texas.

[fol. 76] X

If the said $0.55 rate had been in effect for the seven periods of 12 months each set forth above, the amounts remaining for return, after deducting from net operating revenue three (3%) per cent of $1,225,000.00 would have been as follows:

At $0.55 Rate

For the 12 Months Ended	Per Cent of $1,225,000.00
March, 1932	0.89%
July, 1932	0.63%
October, 1932	Nothing (Deficit equals 0.32%)
December, 1932	Nothing (Deficit equals 0.01%)
March, 1933	Nothing (Deficit equals 0.58%)
July, 1933	Nothing (Deficit equals 1.31%)
October, 1933	Nothing (Deficit equals 1.35%)
December, 1933	Nothing (Deficit equals 1.74%)

At the $0.55 rate, after deducting from net operating revenue three (3%) per cent of $885,000.00, the amounts remaining for return would have been as follows:

[fol. 77] At $0.55 Rate

For the 12 Months Ended	Per Cent of $885,000.00
March, 1932	2.38%
July, 1932	2.03%
October, 1932	0.71%
December, 1932	1.14%
March, 1933	0.35%
July, 1933	Nothing—(Deficit equals 0.66%)
October, 1933	Nothing—(Deficit equals 0.72%)
December, 1933	Nothing—(Deficit equals 1.38%)

By reason of the above facts, the Commission's said order of June 13, 1933 is unlawful and void, and if enforced, will deprive defendant of its property without due process of law, and deny it the equal protection of the laws, contrary to the Fourteenth Amendment to the Federal Constitution and the Bill of Rights of the Constitution of the State of Texas.

XI

As set forth above, defendant in June, 1932, made application to the governing body of the City of Laredo for appropriate action by that body authorizing defendant to [fol. 78] put into effect and thereafter charge and collect in Laredo the following rates for natural gas and natural gas service furnished to domestic consumers:

$1.50 net per month, which $1.50 entitles consumer to use 100 cubic feet of gas during such month;
$0.90 net per M. C. F. for the next 2000 cubic feet of gas used during such month;
$0.70 net per M. C. F. for all additional gas used during such month.
Minimum monthly bill $1.50 net.

The governing body of the City of Laredo refused to grant said application and the Railroad Commission of Texas on appeal in Gas Utilities Docket No. 63 denied such application and instead ordered defendant to charge said $0.55 rate as above set forth.

If the domestic gas rate set forth in Gas Utilities Docket No. 63 and fully described above in this paragraph had been in effect for the twelve months ended December, 1932, and for the twelve months ended December, 1933, defendant's net operating revenue from the sale of gas in Laredo, after deducting therefrom three (3%) per cent of $1,225,- [fol. 79] 000.00, would have been less than seven (7%) per cent of $1,225,000.00 for both said twelve months' periods.

Defendant, therefore, says that the action of the City of Laredo and the Railroad Commission of Texas, in refusing defendant's said application to put into effect said rate above set forth has denied defendant a reasonable rate of net return on the fair value of its property used and useful to furnish said service and has denied defendant just compensation for the use of its said property ever since the date of said application and has resulted in daily confiscation of said property, and has deprived defendant of its constitutional rights guaranteed by the Constitutions of the United States and the State of Texas. In this connection defendant shows that it has done all it could before the legislative and rate making bodies of the State of Texas to get relief and cannot get it, and that the Railroad Com-

mission of Texas is the final legislative and administrative board or commission to which defendant may appeal and no other legislative or administrative board, commission, body or agency of the State of Texas is authorized to supersede the rates fixed by the Commission in its opinion [fol. 80] and order dated June 13, 1933 and to establish fair, reasonable and compensatory rates in lieu thereof.

XII

Defendant, therefore, says that by reason of the above and foregoing facts, the Commission's said opinion and order of June 13, 1933 are void, unenforceable and should be set aside, that said $0.75 rate and said $0.55 rate are each confiscatory and that if defendant is required by public authority to charge either of said rates in the future, or put said $0.55 rate into effect from January 1, 1932 and for the future, defendant will thereby be deprived of its property without due process of law and denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, and will be deprived of its property without due course of law, in violation of the Bill of Rights of the Constitution of Texas.

Wherefore, defendant prays that plaintiffs take nothing by their suit; that the injunction sought by plaintiffs be denied, and that defendant go hence without day and re- [fol. 81] cover its costs in this behalf expended.

Mann, Neel & Mann, Ben H. Powell, Baker, Botts, Andrews & Wharton, Attorneys for Defendant, United Gas Public Service Company.

Duly sworn to by J. V. Strange. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 81a–81b] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' FIRST SUPPLEMENTAL PETITION—Filed March 6, 1934

To the Honorable Judge of Said Court:

* * * * * * *

[fol. 81c]

V

Answering further, if required, these plaintiffs respectfully submit that on the 18th day of February, A. D. 1909 defendant's predecessors were granted a franchise by the City of Laredo for the construction and operation of a [81-d] natural gas distribution system in the said city, for a period of twenty five (25) years from and after said date; further, that at the time of the granting of the said franchise the City of Laredo had a population of approximately 14,000 inhabitants, and while operating under the terms of the said franchise from the time of its grant in the year 1909 defendant's predecessors furnished natural gas to the domestic, consumers in the City of Laredo at a rate of Fifty cents ($.50) per thousand cubic feet, with a $1.00 per month minimum charge, which rate prevailed until the year 1920.

VI

Further, that in the year 1920, defendant's predecessor, Border Gas Company, petitioned the Mayor and City Council of Laredo for an increase in the schedule of rates for natural gas served to domestic consumers from the then prevailing rate of 50¢ per 1000 cubic feet to 75¢ per 1000 cubic feet, based on its (the Company's) plea that the gas wells serving the City of Laredo, at that time were being swiftly depleted of their supply of natural gas and that it was necessary for the Company to drill additional wells to supplement its supply; further, that the said plea for an increase in rates for domestic consumers to 75¢ per 1000 cubic feet was granted by the Mayor and City Council of Laredo to take effect January 1, 1921, provided that if gas were found in the vicinity of Laredo, supplementing the Company's then supply, that in that event the rates

charged consumers of natural gas in the City of Laredo [fol. 81e] would again be lowered; further, that shortly after the granting of the said increase in rates an ample supply of natural gas became available to the Border Gas Company for serving the City of Laredo, but no reduction as contemplated by the aforesaid order of the City Council was ever made by the said Border Gas Company, and the said rate of 75¢ per 1000 cubic feet with a 10% discount for prompt payment of bills and a minimum bill of $1.00 per user per month prevailed in the City of Laredo from the early part of the year 1921 until the passage of the ordinance of December 15th, 1931, complained of by defendant herein and is the now prevailing rate; further, that since the time of the granting of said franchise the City of Laredo has had a steady and normal growth in population and at the time of the passage by its governing body of the gas reduction ordinance of December 15th, 1931, complained of by defendants, had and has continued to have a population in excess of thirty thousand (30,000) inhabitants.

VII

These plaintiffs would further show that the said Border Gas Company during the year 1909, acquired all rights under the aforesaid franchise granted by the City of Laredo, and during the said year began and completed the construction of a gas transmission line from the "Reiser" gas field (situated approximately 22 miles from the City of Laredo) to the Laredo city gate; and also constructed the gas distribution system serving the City of Laredo, at the end of the said year 1910; further, in the year 1916 the [fol. 81f] said Border Gas Company extended its gas transmission line serving the City of Laredo approximately, 26 miles from the point known as "Pescadito Junction" to what is known as the "Jennings" gas field; and later, in the years 1922 and 1923 an additional 24 miles of transmission line was laid extending from the said "Pescadito Junction" to what is known as the "Carolina-Texas" gas field; further, that from the beginning of the year 1910 until the month of April, 1928, the said Border Gas Company operated the producing, gathering, transmission and distribution properties supplying the natural gas consumed in the City of Laredo. In the month of April, 1928, how-

ever, that portion of the property of the Border Gas Company comprising the distribution system, including all rights and privileges under the aforesaid franchise was acquired by the above mentioned, newly organized Texas Border Gas Company, a Texas corporation; and at that time the portion of the properties of the Border Gas Company comprising the transmission system was acquired by the above mentioned, newly organized South Texas Gas Company; and that portion of the properties of the Border Gas Company comprising the producing gas wells, royalty contracts, oil leases and other production property, as well as the gathering lines and equipment was acquired by the newly organized South Texas Production Company, all units of the United Gas System. Further, from the said month of April, 1928, until the month of October, 1932, the said properties were operated by the said three named corporations (units of the United Gas System); on which latter date, however, a transfer of all of said properties to defendant, United Gas Public Service Corporation, a [fol. 81g] Delaware corporation (a unit of the United Gas System) was effected.

VIII

These plaintiffs would further show that the books and records of defendant's predecessors, Border Gas Company, Texas Border Gas Company and South Texas Gas Company were in the possession of and available to defendant prior to and at the time of the hearing held before the Railroad Commission, but that defendant failed and refused to make use of such records and presented no evidence whatsoever to the commission as to the cost of fixed capital, or as to the historical cost of the properties involved, but, in the submission of its evidence, limited itself to the purely hypothetical reproduction cost new method exclusively, and refused to give any consideration whatsoever to the historical cost of such property.

IX

Further, that although defendant, at the time it presented its evidence before the Railroad Commission in this cause, had available books and records showing the entire history of its operations in the City of Laredo, defendant arbitrarily confined itself to submitting operating statements covering

only the eighteen month period beginning March 31, 1931 [fol. 81h] and ending October 31, 1932, and at this time is confining its allegations as to operations to the limited and abnormal period beginning with the twelve month period ended March 1932 and ending with the twelve month period ended December, 1933, during which period defendant alleges that i-s gross revenue from domestic, commercial and industrial consumption in the City of Laredo has materially declined, and further alleges that the alleged loss in industrial revenue cannot be recouped in the future, when in fact a large per cent of such alleged loss of commercial and industrial revenue is due to the arbitrary and capricious methods pursued by defendant and its predecessor, Texas Border Gas Company; further, that defendant, in prosecuting its appeal before the Railroad Commission in this cause adduced no evidence whatsoever as to such alleged decline in revenue from industrial users, although such facts, if resulting in a decrease in industrial revenue as alleged by defendant, were available to and known by defendant prior to and at the time of the said hearing in this cause before the Railroad Commission; further that the defendant is at this time failing and refusing, as it has failed and refused in presenting its evidence before the Railroad Commission, to set forth its operating returns over a period of time sufficiently large to embrace the good as well as the lean years of its operations in the City of Laredo.

X

Further, that the earnings of the defendant and its prede- [fol. 81i] cessors, Texas Border Gas Company, and South Texas Gas Company, as reflected in the period representing the corporate life of the said two companies from April, 1928, to August 1, 1932, as presented by plaintiff, City of Laredo, in its evidence before the Railroad Commission in the said hearing, and considered by the said Commission in arriving at the 55 cent domestic rate set forth in its order of June 13th, 1933, do not, nor do subsequent operations disclose that the said rate is either unreasonable to defendant or confiscatory of its property; further, the said domestic rate of 55¢ per 1000 cubic feet, as ordered by the Railroad Commission is not only reasonable and non-confiscatory, but the value of the service rendered by defendant in furnishing natural gas and natural gas service to the domestic rate

payers in the City of Laredo on January 1, 1932, and at all times thereafter has not been and is not now in excess of fifty-five cents (55¢) per 1000 cubic feet.

XI

Further, that the said fifty-five (55¢) cent rate which defendant alleges to be confiscatory of its property has not in fact been put into effect and has had no trial or test for any period of time within which to ascertain the amount of revenue that it is capable of producing; and further, in the absence of such test period, these plaintiffs would show; that a decrease in the rate from seventy-five (75¢) cents per 1000 cubic feet to fifty-five (55¢) cents per thousand cubic feet to domestic consumers in the City of Laredo, and the [fol. 81j] substitution of a reasonable, instead of the arbitrary method heretofore and now pursued by defendant in the City of Laredo, in its charges to commercial and industrial and prospective commercial and industrial consumers of natural gas in the said City, and in the territory immediately adjoining said City, would result in increased revenue from the sale of said gas to such consumers and prospective consumers; further, that in the absence of a fair trial or test period showing the actual results of operations under the said fifty-five (55¢) cent rate, defendant's allegation of the unreasonable and confiscatory character of said rate is purely speculative and furnished no sufficient basis, either in law or in fact, upon which a Court or jury in this cause could predicate a finding of unreasonableness to defendant or of confiscation of its property.

Wherefore, these plaintiffs pray that the relief prayed for by defendant in its answer and cross-action be denied; further, that the order of the Railroad Commission herein sued upon be declared valid and subsisting as entered by the Commission; and that these plaintiffs have such other and further relief, in law and in equity, as they may be entitled to and will ever pray.

[fol. 81k] James V. Allred, Attorney General; A. R. Stout, Assistant Attorney General; Hicks, Dickson, Bobbitt & Lange, Robert Lee Bobbitt, Edw. H. Lange, Attorneys for Plaintiffs. Wm. C. Fitzhugh, Assistant Attorney General.

[File endorsement omitted.]

[fol. 81] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OF COURT ON DEMURRERS AND EXCEPTIONS—March 7, 1934

On this, the 7th day of March, A. D. 1934, came on to be heard in the above entitled and numbered cause, the general demurrer and the special exceptions set out in Defendants First Amended Original Answer to the Plaintiff's Original Petition, and the Court after hearing the argument of counsel, is of the opinion that said general demurrer, and special exceptions set out in Defendant's First Amended Original Answer, should be in all things overruled.

It is, Therefore Ordered, Adjudged and Decreed by the Court that the general demurrer and special exceptions contained in paragraph A, sub-numbers 1, 2, 3 and 4, and in paragraph B, sub-numbers 1, 2, 3, 4, 5, 6 and 7 of Defendant's First Amended Original Answer be and the same are hereby overruled.

To which action of the Court in overruling the general demurrer and said special exceptions and each of said special exceptions and the reasons supporting same, the Defendant in open Court then and there excepted, taking its Bill of Exceptions to the action of the Court upon each of said exceptions separately.

And thereupon came on to be heard the general demurrer and special exceptions set out in the Plaintiff's First Supplemental Petition to the Defendant's First Amended Original Answer, and the Plaintiffs, through their attorneys of record thereupon announced in open Court that they desired to waive said exceptions, and upon such announcement, said exceptions were considered and treated by the Court as waived.

And thereupon came on to be heard the general demurrer and special exceptions set out in the Defendant's Replica-[fols. 81m-82-83] tion to the Plaintiff's First Supplemental Petition, and it appearing to the Court that the general demurrer should be overruled, and that all special exceptions therein contained should be sustained.

It is Therefore Ordered and Decreed by the Court that the general demurrer contained in paragraph I of Defend-

ant's Replication to Plaintiff's First Supplemental Petition, be and it is hereby overruled, to which Defendant then and there excepted.

It is Further Ordered by the Court that the special exceptions contained and set out in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Defendant's Replication to Plaintiff's First Supplemental Petition, be and the same are hereby sustained, to which action of the Court as to each exception the Plaintiffs then and there in open Court excepted.

C. A. Wheeler, Judge Presiding.

[fol. 83a] In District Court of Travis County

[Title omitted]

Plaintiffs' Request for Instructed Verdict—Filed March 15, 1934

To Hon. C. A. Wheeler, Judge of Said Court:

Comes now The State of Texas, Railroad Commission of Texas, Miriam A. Ferguson, Governor of Texas, James V. Allred, Attorney General of Texas, City of Laredo and its mayor, city attorney and councilmen, plaintiffs in the above styled and numbered cause, after the defendant United Gas Public Service Company has closed its evidence and rested its case attacking the order of the Railroad Commission of Texas, bearing date of June 13, 1933, and respectfully move the Court to instruct the jury to return the verdict hereinafter set out for the above named plaintiffs and against said defendant, for the reason that the law and facts are with the plaintiffs, and the defendant has wholly failed to make out a case as against said order of the Commission and has not offered such clear and satisfactory proof as to raise an issue or any fact question for the determination by the jury as to whether said order is unjust and unreasonable, said verdict being as follows:

[fol. 83b] IN THE FIFTY-THIRD JUDICIAL DISTRICT COURT, TRAVIS COUNTY

No. 52,774

THE STATE OF TEXAS et al.

vs.

UNITED GAS PUBLIC SERVICE COMPANY

Gentlemen of the Jury:

Under the law, the defendant United Gas Public Service Company has failed to make out a case against the order of the Railroad Commission of Texas bearing date of June 13, 1933, and I, therefore, instruct you to find for the plaintiffs and against the defendant, and that said order is not unreasonable and unjust. Let your verdict be as follows:

"We, the jury find for the plaintiffs and against the defendant United Gas Public Service Company. We further find that the order of the Railroad Commission of Texas bearing date of June 13, 1933, is not unreasonable and unjust.

—— ——, Foreman."

Respectfully submitted, R. L. Bobbitt and Ed Lange, Attorneys for City of Laredo and its Mayor, City Attorney and Councilmen. Wm. C. Fitzhugh and A. R. Stout, Attorneys for State of Texas, Railroad Commission of Texas, Miriam A. Ferguson, Governor and James V. Allred, Attorney General of Texas.

[fol. 83c] ORDER

The above and foreging request for an instructed verdict was duly and seasonably presented to the Court by the attorneys for the record parties plaintiff after the record parties defendant had closed their evidence and rested their case in chief in opposition to and in attack of and against the order of the Railroad Commission of Texas bearing date of June 13, 1933, and the same was by the Court duly considered and was by the Court overruled, to which the record parties plaintiff duly except.

C. A. Wheeler, Judge of the Fifth-Third Judicial District of Texas.

[File endorsement omitted.]

[fol. 83d] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT TO DISCHARGE JURY—Filed April 5, 1934

To the Honorable Judge of Said Court:

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause at the conclusion of all the testimony herein and after all parties had announced the evidence was closed and on this the 5th day of April, 1934, moves the Court to discharge the jury herein and for cause says:

Plaintiffs herein requested a trial by jury and made the necessary deposit of a jury fee in order to have this case put upon the jury docket.

The constitutional and statutory provisions of the laws of Texas relating to trial by jury do not entitle the plaintiffs in this cause to a trial of this case before a jury in that the right of a trial by jury in this character of case did not exist at common law at the time of the adoption of the constitutional provisions of the State Constitution of Texas relating to trial by jury and the right of a trial by jury in this character of case did not exist at common law at the time of the adoption of the statutory provisions of the State of Texas relating to a trial by jury in Texas.

No right of trial by jury under the constitution or statutes of this State exists.

The submission of any issue or of any question to a jury of laymen such as the jury is composed of in this case will probably deprive this defendant of its just rights for [fol. 83e] the reason that much of the evidence is of a highly technical nature and is of such a character that a jury cannot arrive at a just, fair, and correct verdict under the system provided in this state for deliberation and consideration by a jury of its verdict, and the submission of this case or of any question herein to a jury will deprive this defendant of that character of hearing and trial contemplated under the Constitution and laws of the United States and of the Constitution and laws of the State of Texas.

In support of this motion the defendant here now offers to reimburse the Clerk of this Court and here and now

tenders to the Clerk of this Court all expense thus far incurred because of the empannelling of the jury herein and the attendance of the jury at the trial of this cause, the tender being made of those expenses incurred since the jury was selected and empanelled herein and only those expenses incurred because of the selection, empanelling, and attendance of the jury thus far in the trial hereof.

Wherefore, premises considered, defendant prays that the jury be discharged herein and that all questions in this cause be determined by the Court.

Respectfully submitted, Mann, Nell & Mann, Ben H. Powell, Baker, Botts, Andrews & Wharton, by Tom Surry, Attorneys for Defendant.

ORDER

Submitted to the Court at the conclusion of the testimony herein, prior to the submission of any issue to the jury, and said motion is this day overruled by the Court, to which action of the Court, defendant United Gas Public Service Company then and there in open Court excepted:

This the 5th day of April, A. D. 1934.

C. A. Wheeler, Judge.

[fol. 83f] [File endorsement omitted.]

[fol. 83g] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF THE RECORD PLAINTIFFS FOR AN INSTRUCTED VERDICT AND ORDER OVERRULING SAME—Filed April 5, 1934

To the Honorable C. A. Wheeler, Judge of Said Court:

Now come the State of Texas, et al, record plaintiffs in the above styled and numbered cause, who represent that they are the real defendants in said suit and are only nominal plaintiffs, after all of the evidence in said cause has been closed and after both sides have rested, and respectfully request and move the Court to instruct the jury to return a verdict in their favor and against the defendant, United Gas Public Service Company.

Respectfully submitted, Wm. C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General; Robert Lee Bobbitt, Ed Lange, Attorneys for the Record Plaintiffs.

[fol. 83h-84-86] ORDER

The above and foregoing motion for an instructed verdict was duly presented to the Court and counsel for the record defendant after both sides had rested and all of the evidence in said cause had been closed and before the reading of the Court's main charge to the jury, and the same was by the Court overruled, to which the Plaintiffs excepted.

C. A. Wheeler, Judge Presiding.

[File endorsement omitted.]

[fol. 87] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR INSTRUCTED VERDICT AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and at the conclusion of all the evidence herein and after all parties herein had announced that the evidence was closed, and prior to the submission of any issue to the jury and here now moves the Court to instruct the jury to return a verdict for the defendant United Gas Public Service Company.

Respectfully submitted (Signature of counsel omitted).

ORDER

The above and foregoing motion for peremptory instruction was submitted to opposing counsel and to the Court on this the 5th day of April, A. D. 1934, prior to the submission of any issue to the jury and said motion is here now overruled by the Court, to which action of the Court the defendant; United Gas Public Service Company, then [fol. 88] and there in open court excepted.

Ordered the 5 day of April, 1934.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 89] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT DENYING PLAINTIFFS ANY RELIEF ON ORDER OF R. R. COMMISSION FOR THE CALENDAR YEAR 1932 AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and after all parties herein had announced that the evidence was closed, and after the Court had overruled defendant's motion for peremptory instruction and without waiving said motion for peremptory instruction and now prior to the submission of any issue to the jury, said defendant United Gas Public Service Company moves the Court to render judgment herein denying the plaintiffs any relief upon the order of the Railroad Commission for the calendar year 1932, and refusing the enforcement of said order for the calendar year 1932 because under all the testimony herein most favorable to the plaintiffs it appears that the enforcement of said order for the calendar year 1932 will result in confiscation of defendant United Gas Public Service Company's properties and will result in depriving it of its property without due process of law.

Respectfully submitted (Signature of Defendant's counsel omitted).

[fol. 90] ORDER

Submitted to opposing counsel and the Court on this the 5th day of April, 1934, after the Court has overruled defendant's motion for peremptory instruction and prior to the submission of any issue to the jury, and said motion is here now overruled by the Court to which action of the Court defendant United Gas Public Service Company then and there in open Court excepted.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 91] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S MOTION REQUESTING COURT TO RENDER JUDGMENT DENYING PLAINTIFFS ANY RELIEF UPON ORDER OF R. R. COMMISSION FOR YEAR 1933, AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and after all parties herein had announced that the evidence was closed, and after the Court had overruled defendant's motion for peremptory instruction and without waiving said motion for peremptory instruction, and now prior to the submission of any issue to the jury, said defendant United Gas Public Service Company moves the Court to render judgment herein denying the plaintiffs any relief upon the order of the Railroad Commission for the calendar year 1933, and refusing the enforcement of said order for the calendar year 1933 because under all the testimony herein most favorable to the plaintiffs it appears that the enforcement of said order for the calendar year 1933 will result in confiscation of defendant United Gas Public Service Company's properties and will result in [fol. 92] depriving it of its property without due process of law.

Respectfully submitted (Signature of Defendant's counsel omitted).

ORDER

Submitted to opposing counsel and to the Court on this the 5th day of April, 1934, after the Court has overruled defendant's motion for peremptory instruction and prior to the submission of any issue to the jury, and said motion is here now overruled by the Court to which action of the Court defendant United Gas Public Service Company then and there in open court excepted.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 92a] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

To the Honorable Judge of Said Court:

* * * * * * *

I

That it would have been proper for the Court to have directed a verdict in this case for the United Gas Public Service Company and therefore under and by virtue of Article 2211, as amended by the 42nd Legislature, United Gas Public Service Company is entitled to a judgment non obstante verdicto.

* * * * * * *

[fol. 92b] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' MOTION FOR JUDGMENT—Filed April 24, 1934

Come now the plaintiffs in the above styled and numbered cause, and in addition to their motions for judgment heretofore filed, and without waiving any of them in whole or in part, plaintiffs now respectfully move the Court, said other motions having all been overruled by the Court, that the Court enter judgment in favor of the plaintiff, City of Laredo, Texas, for the use and benefit of the domestic and residential consumers of gas in said City and against the defendant, United Gas Public Service Company, for the difference between the fifty-five cent rate promulgated in the order of the Railroad Commission bearing date of June 13, 1933, and the existing seventy-five cent gas rate now being charged and collected by said defendant, United Gas Public Service Company, and that such judgment and recovery be, become effective, and date from the date, to-wit: August 1st, 1933, when said defendant enjoined the plaintiffs herein from putting into force and effect, or in any

way carrying out, the fifty-five cent rate as prescribed by and in said order of the Railroad Commission of Texas.

James V. Allred, Attorney General; Wm. C. Fitzhugh, Assistant Attorney General; Robert Lee [fol. 92c] Bobbitt, E. R. Lange, Attorneys for Plaintiffs.

ORDER

The above and foregoing motion was duly presented to the Court and adverse counsel prior to the entry of judgment herein, and after having been duly considered by the Court the same was by the Court overruled,

To which action of the Court the plaintiffs duly excepted.

C. A. Wheeler, Judge, Presiding.

[File endorsement omitted.]

[fol. 92d] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' MOTION FOR JUDGMENT—Filed April 24, 1934

Come now the plaintiffs in the above styled and numbered cause and respectfully move the Court to enter judgment in their favor and against the defendant, United Gas Public Service Company, upon the verdict of the jury in answer to the Special Issues submitted to them by the Court in this cause.

Respectfully submitted, James V. Allred, Attorney General; Wm. C. Fitzhugh, A. R. Stout, Assistant Attorney General; Robert Lee Bobbitt, E. H. Lange, Attorneys for Plaintiffs.

ORDER

Motion granted this 24th day of April, 1934, Defendants excepts.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 92e] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFF'S BILL OF EXCEPTION No. 1—Filed April 24, 1934

Be it Remembered:

That on the trial of the above and foregoing cause among other proceedings the following were had, to-wit:

In making out their case in chief, in introducing their direct evidence, the plaintiffs duly offered to introduce in evidence the styled appeal and supersedeas bond which was filed with the Railroad Commission of Texas by the defendant's predecessor in title, Texas Border Gas Company, which same is set out in haec verbae as follows, to-wit:

"BEFORE THE RAILROAD COMMISSION OF TEXAS

Gas Utility Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY From an Ordinance of the City of Laredo, Texas

Appeal and Supersedeas Bond

Whereas, Texas Border Gas Company, a corporation, has filed an appeal with the Railroad Commission of Texas from an action by ordinance of the City of Laredo, Texas, in reducing the rates and charges to consumers supplied with natural gas and natural gas service by the Texas Border Gas Company in said City of Laredo; and,

Whereas, by an order of the Railroad Commission of Texas, duly entered, the appeal of said Texas Border Gas Company was allowed and the said ordinance and the rates, [fol. 92f] charges, rules and regulations therein prescribed were suspended and superseded pending final hearing and determination of the said cause on appeal, provided Texas Border Gas Company filed with the Railroad Commission of Texas a properly conditioned bond, with good and sufficient surety;

The condition of this obligation is, that the said principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said City any excess of rates or charges collected by the principal, Texas Border Gas Company over and above the rates and charges that shall

be finally determined to be a fair and reasonable return upon the value of its property used and useful in supplying natural gas and natural gas service to the City of Laredo, Texas; otherwise, this obligation shall be null, void and of no further force or effect.

Witness the execution hereof on this 23rd day of December, 1931.

(Signed) Texas Border Gas Company, by F. G. Coates, Attorney. National Surety Company, by Ben H. Powell, Attorney-in-Fact for the Surety Company. (Seal.)"

To the introduction of said above bond and instrument in evidence the defendant, United Gas Public Service Company, objected because the same was immaterial and irrelevant to any issue in this cause, and because it would be prejudicial to said defendant's rights before the jury.

The Court sustained the defendant's objection and ex- [fol. 92g] cluded the introduction of said appeal and supersedeas bond and denied plaintiffs the right to introduce the same in evidence.

To which action of the Court plaintiffs in open Court then and there duly excepted, and here now present such action of the Court for review on appeal as plaintiffs' Bill of Exception No. 1.

ORDER

The above and foregoing plaintiffs' Bill of Exception No. 1 having been examined and considered by the Court, and having been found to be true and correct, is here now allowed and ordered filed as plaintiffs' Bill of Exception No. 1.

C. A. Wheeler, Judge.

Presented and Agreed To. A. R. Stout & Wm. C. Fitzhugh, Robert Lee Bobbitt and E. H. Lange, Attorneys for Plaintiffs State of Texas, et al. Tom Scurry, Attorneys for Defendant, United Gas Public Service Company.

[File endorsement omitted.]

[fol. 92h] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR ORIGINAL OF DEFENDANT'S EXHIBIT 13 TO BE SENT UP TO APPELLATE COURT—Filed April 24, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause, and represents to the Court that the parties to this suit by their respective attorneys of record have agreed that certain exhibits introduced in evidence during the trial of this case may be sent up in their original forms to the appellate court on appeal hereof and defendant here now moves the Court that it direct that the original of Defendant's Exhibit No. 13 consisting of documents hereinafter set out be sent up to the appellate court as a part of the record in this cause.

The original exhibit requested to be sent up as a part of the record in this cause is Defendant's Exhibit No. 13, [fol. 92i] described in the transcript of evidence as follows:

"Defendant's Exhibit No. 13, consisting of the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Docket Nos. 49 and 63, consisting of:

"Book I, of the Transcript of Testimony, being part of the testimony heard in October, 1932; book II of the transcribed testimony, being a part of the testimony heard in October, 1932;

"Book I, of the Transcript of Testimony, being part of the testimony before the Railroad Commission heard November, 1932; Book II of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932;

Company's Exhibits, as follows: Exhibit No. 1, Exhibit No. 2, Exhibit No. 3, Exhibit No. 4, Exhibit No. 4-A, Exhibit No. 5, Exhibit No. 5-A, Exhibit No. 6, Exhibit No. 7, Exhibit No. 8, two instruments both marked Exhibit No. 9, one being a partly handwritten, partly typewritten copy of a contract dated December 31, 1929, between the South Texas Gas Company, seller and Compania Mexicana de Gas; and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract be-

tween the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932; Exhibit No. 10, Exhibit No. 11.

[fol. 92j] City of Laredo Exhibits, as follows: Exhibit A, Appraisal, Exhibit A (2), Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit A-Supplemental 1, Exhibit A-Supplemental 2, Exhibit 1 (map), Exhibit J, (map) Exhibit K (map), Exhibit L."

Respectfully submitted, Baker, Botts, Andrews & Wharton, by Tom Scurry, Attorneys for Defendant United Gas Public Service Company.

The plaintiffs, acting by and through their duly authorized attorneys of record, agree that the original of the foregoing exhibit described in the above motion may be sent up as a part of the record in this case in lieu of a transcript of said exhibit described in the foregoing motion, and join in this motion of the defendant United Gas Public Service Company, requesting the Court to direct that the original of said exhibit be sent up as part of the record hereof.

Hicks, Dixon, Bobbitt & Lange, by Edward H. Lange, [fol. 92k] William C. Fitzhugh, Assistant Attorney General; —— ——, Assistant Attorney General, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 921] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER SENDING DEFENDANT'S ORIGINAL EXHIBIT No. 13 UP TO APPELLATE COURT—April 25, 1934

It is, Therefore, Ordered, and Directed by the Court that the following instruments constituting Defendant's Exhibit No. 13 introduced upon the trial hereof be sent up to the Appellate Court as a part of the Statement of Facts and record on appeal in this case, to-wit:

[Here follow exhibits itemized as in the hereinabove motion and order signed by the district judge and filed May 4, 1934.]

[fols. 92m-92n] Bond on Appeal for $32,000.00, approved and filed April 26, 1934, omitted in printing.

[fol. 93] IN FIFTY-THIRD DISTRICT COURT, TRAVIS COUNTY, TEXAS

No. 52,774

THE STATE OF TEXAS et al.

v.

UNITED GAS PUBLIC SERVICE COMPANY

Statement of Facts

Before Hon. C. A. Wheeler, Judge, and a Jury.

APPEARANCES

A. R. Stout, Esq., Assistant Attorney General. W. C. Fitzhugh, Esq., Assistant Attorney General, for the State of Texas. R. L. Bobbitt, Esq., Edward H. Lange, Esq., for the City of Laredo.

Frank G. Coates, Esq., Tom Scurry, Esq., John Bullington, Esq., of Baker, Botts, Andrews & Wharton, Houston, Texas; C. B. Neel, Esq., Ben H. Powell, Esq., for United Gas Public Service Company.

[fol. 94] Plaintiffs' Testimony

C. F. PETET, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. C. F. Petet.

* * * * * * *

Q. What is your occupation at this time?
A. Secretary of the Railroad Commission of Texas.

* * * * * * *

Mr. Lange: This is a certified copy of the Railroad Commission's order of June 13, 1933. I want the witness to identify it.

Q. Is that instrument that you hold a certified copy of the Railroad Commission's order entered in the case to which it refers?

A. Yes, sir.

* * * * * * *

(Thereupon the copy of the opinion and order was offered in evidence by the plaintiffs and marked Plaintiffs' Exhibit No. 3. This exhibit is a duplicate of the copy of the Railroad Commission's opinion and order of June 13, 1933, which was attached to plaintiffs' original petition as Exhibit B thereof, which opinion and order appear at side folios 18-48 of this transcript.)

[fol. 95] STIPULATION AS TO RATE IN EFFECT

* * * * * * *

Mr. Lange: Now, if the Court please, we desire at this time to stipulate for the purpose of the record that the 55-cent rate provided for in this order has never been put into effect and is not now in effect.

Mr. Coates: That is true, and the plaintiff need not introduce any evidence that the 55-cent rate has not been put into effect, because it is a fact that it has not been.

Mr. Stout: And that the 75-cent rate is still being charged and collected from the consumers in the City of Laredo.

* * * * * * *

Mr. Lange: The plaintiff rests.

DEFENDANT'S MOTION FOR INSTRUCTED VERDICT

Mr. Coates: Comes now the defendant United Gas Public Service Company, and upon the conclusion of plaintiffs' testimony, and after the plaintiff has rested, moves the Court to instruct the jury to return a verdict against the plaintiffs herein and for the defendant United Gas Public Service Company.

(Motion overruled, defendant's exception noted.)

[fol. 96] Defendant's Testimony

HENRY BECK, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. Henry Beck.
Q. What is your business, Mr. Beck?
A. I am Chief Reporter for the Railroad Commission.

* * * * * * *

Q. Mr. Beck, were you Chief Reporter for the Railroad Commission in October and November, 1932?
A. Yes, sir.
Q. During those two months did you report the testimony and likewise all stipulations and agreements set forth in the hearing before the Railroad Commission in connection with the Laredo case?
A. Yes, sir.
Q. Did you correctly so report those proceedings?
A. Yes, sir.

* * * * * * *

Q. Do you hold in your hand a transcript of such testimony, Mr. Beck?
[fol. 97] A. A good part of it. I don't think it is complete.
Q. But such part as you hold is a part of the transcript of the testimony in that hearing?
A. Yes, sir.
Q. Will you kindly read into the record here a stipulation contained on pages 213 and 214 of that record?

(Plaintiffs object to stipulation as to 5-cent well head price. Court rules that proof competent to show that stipulation made and that the Commission's order was based upon the stipulation, but declines to hold that stipulation binding upon plaintiffs in this trial.)

STIPULATION BEFORE COMMISSION AS TO 5-CENT WELL HEAD PRICE

* * * * * * *

A. This is statement by Mr. Coates: "The City of Laredo and ourselves have reached an agreement on one thing, and as preliminary to the stipulation I am about to enter into the record, I will state the purpose of it; the utilities companies in this case have not inventoried and appraised the production properties, including the wells, which are used and useful to serve gas to the City of Laredo, but instead, and in order to simplify the matter as much as possible, have used a price of 5 cents per thousand cubic feet for gas at the mouth of the well; in the accounting figures for the South Texas Gas Company, the purchase price is computed at 5 cents per thousand cubic feet, and that is shown as the cost or the purchase price [fol. 98] of gas in the accounting exhibits that are still to be introduced. It has been agreed and stipulated between Texas Border Gas Company and South Texas Gas Company that for the purposes of this case and all purposes of this case, the fair prevailing market price, and the fair worth of gas in the Laredo area at the mouth of the wells is 5 cents per M. C. F."

Mr. Bobbitt: That is correct, but that does not mean, of course, that there is not plenty of gas available that could be acquired at a lower price.

Mr. Coates: No, and it does not mean there is not some gas that would cost you more, but for the purposes of this case, and for the purpose of fixing the price of gas to start with, it is stipulated that the fair prevailing price shall be treated in this case for the purpose of fixing rates, and finding a net return, and a net rate of return, and so forth, at 5 cents per thousand cubic feet at the mouth of the well.

Mr. Bobbitt: That is correct.

Commissioner Thompson: That will mean that we will not be given the burden of figuring reserves and depletion [fol. 99] and so on; we are very glad to have this stipulation. It saves us lots of study."

* * * * * * *

H. E. Womack, a witness for the defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name to the jury.

A. H. E. Womack.

Q. What is your profession, Mr. Womack, if you have any?

A. I am an accountant for the United Gas Public Service Company.

* * * * * * *

Q. Are you a Certified Public Accountant?

A. I have a certificate as a Certified Public Accountant in Oklahoma.

Q. Now, Mr. Womack, for the purpose of testifying in this case have you made an examination of any particular accounting records?

A. Yes.

Q. What do those accounting records consist of, generally speaking?

A. Generally speaking, they consist of ledgers, vouchers, and various records that one would naturally find in any [fol. 100] sort of business.

Q. And to whom do those records, ledgers and vouchers belong?

A. The South Texas Gas Company, The Texas Border Gas Company, and the United Gas Public Service Company.

* * * * * * *

Q. Please state to the Court and jury the method by which the same are kept.

A. They are kept in the regular order of business by an acknowledged and used classification of accounts, and one generally in use by gas companies in the United States.

Q. Please state whether or not the classification of accounts so employed is based on any nationally known and prescribed classification.

A. Yes, it is based on a standard classification employed by most of the gas companies in the United States.

Q. And is it based on any classification prescribed by any particular association?

A. Yes, the American Gas Association prescribes that classification; also the Association of Railroad and Utility Commissioners prescribes it.

Q. Are you referring to the National Association of Railway and Public Utility Commissioners?

[fol. 101] A. Yes, I am.

* * * * * * *

Q. Mr. Womack, do you know whether any audit is made of such books, records, and accounts?

A. Yes, there is an audit made of those three gas companies' accounts that I mentioned, at least once a year by a responsible firm of auditors, in no way connected with any of these three companies.

Q. And do you know what constitutes the basis for all reports of these companies to United States, State and other governmental authorities.

A. Yes, these particular records about which I spoke, they are the basis for all reports made by these companies to the Federal Government, the State, and other governmental authorities.

Q. State whether or not these accounts to which you refer are the ordinary books of account kept in the usual course of the business of these companies.

A. Yes, they are.

Q. State whether or not they correctly reflect the transactions, the business transactions and accounting matters to which they relate.

A. Yes, they do correctly reflect those particular matters.

[fol. 102]

* * * * * * *

Q. What calendar year does your first operating statement cover?

A. The calendar year 1932.

Q. Have you prepared such an operating statement in written form, for the purpose of introducing the same in evidence as an exhibit?

A. I have.

* * * * * * *

Q. Mr. Womack, referring to Defendant's Exhibit 1, what does the cover sheet show?

A. United Gas Public Service Company, Laredo, Texas. Operating Statement, twelve months ended December 31, 1932. Exhibit 1.

Mr. Coates: We offer this operating statement in evidence, and ask that the same be marked Defendant's Exhibit 1, for identification.

(No objection.)

(Thereupon, the operating statement above referred to marked Defendant's Exhibit 1 was offered in evidence. The same is copied into this transcript upon the pages next following.)

[fol. 103] DEFENDANT'S EX. 1

Page 1

United Gas Public Service Company

City of Laredo—Operating Statement

Twelve Months Ended December 31, 1932

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$119,489.41
Commercial Sales	34,899.13
Industrial Sales	16,240.83
Government and Municipal Sales	2,622.34
Public Utility—For Fuel Sales	8,790.20
Reconnect Charges	1,735.50
Total Operating Revenues	$183,777.41
Operating Expenses:	
Production Expenses	$24,779.16
Transmission Expenses	12,441.58
Distribution Expenses	17,239.84
Utilization Expenses	415.09
Customers Expenses	14,584.27
New Business Expenses	5,212.81
General Expenses	36,621.79
Taxes	13,706.86
Total Operating Expenses	$125,001.40
Net Operating Revenue	$58,776.01

DEFENDANT'S Ex. 1—Continued

[fol. 104] Page 2

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Production:	
Gas Purchased	$20,779.95
Purchased Gas Expenses	4,143.27
Gas Used in Company Operations	144.06
Total Production Expenses	$24,779.16
Transmission:	
Pipe Line Rentals	2,907.66
Superintendence and Operating Labor	1,279.95
Operating Supplies and Expenses	817.61
Measurement—Superintendence and Operating Labor	349.57
Measurement — Operating Supplies and Expenses	367.75
Dispatching — Superintendence and Operating Labor	2,576.32
Dispatching — Operating Supplies and Expenses	76.74
Maintenance of Structures—Pipe line	63.27
Maintenance of Structures—Measurement	167.29
Maintenance of Lines and Equipment — Pipe Line	3,670.52
Maintenance of Equipment—Measurement	164.90
Total Transmission	$12,441.58

DEFENDANT'S EX. 1—Continued

[fol. 105] Page 3

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Distribution:

Superintendence	$2,979.15
Operation of Distribution Mains	383.05
Operation of Services	65.13
Removing and Resetting Meters and House Regulators	1,727.03
Operation of Meter Department	591.63
Other Supplies and Expenses	4,050.93
Maintenance of Structures	214.01
Maintenance of Distribution Mains	3,273.12
Maintenance of Services	944.78
Maintenance of Meters and Regulators	2,926.53
Maintenance of Gas Receivers and District Regulators	38.72
Maintenance of Other Equipment	45.76
Total Distribution Expenses	$17,239.84

Utilization:

Work on Consumers Installations	$380.74
Maintenance of Consumers Installations	34.35
Total Utilization Expenses	$415.09

Customers:

Uncollectible Accounts	$1,365.78
Customers General Labor	663.19
Customers Bookkeeping	4,570.17
Customers Collection	4,015.44
Meter Reading	2,067.92
Other Customer Supplies and Expenses	1,901.77
Total Customers Expenses	$14,584.27

DEFENDANT'S EX. 1—Continued

[fol. 106] Page 4

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

New Business:

Rentals	$122.80
Advertising	2,483.12
Sales and New Business Management and Salesmen's Salaries and Expenses	2,224.34
Piping and Appliances (Gratuitous)	18.13
Other New Business Expenses	364.42
Total New Business Expenses	$5,212.81

General:

Administrative and Other Office Salaries	$15,958.83
Office Supplies and Expenses	1,352.87
Stationery and Printing	153.24
Telephone and Telegraph	580.23
Traveling Expenses	1,565.77
Rentals	1,297.50
Purchase and Stores Expenses	605.23
Law Expenses	1,710.75
Insurance	1,080.27
Supervision and Consultation	2,044.68
Injuries and Damages	219.32
Audit Fees	403.35
Maintenance of General Structures	614.53
Miscellaneous	9,035.22
Total General Expenses	$36,621.79

DEFENDANT'S EX. 1—Continued

[fol. 107] Page 5

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Taxes:

Ad Valorem	
Independent School District	$45.13
City	5,885.06
County and State	4,149.88
Gross Receipts	
Railroad Commission	629.99
State Comptroller	1,823.34
Franchise	
Delaware	444.51
Texas	591.66
Auto License	32.74
Federal Tax on Checks	21.58
Federal Bond Coupon Tax	82.97
Total Taxes	$13,706.86

[fol. 108] Q. Now, will you make an explanation first of the physical arrangement of the matters contained in Defendant's Exhibit 1, and then of the substance and accounting figures contained in this exhibit?

A. Page 1 shows the operating revenues within the City of Laredo, and the operating expenses, and the difference or net operating revenue for the calendar year 1932. Pages 2, 3, 4, and 5 elaborate on the operating expenses; they break them down into sub-accounts from general heads as shown on page 1.

Q. Is that, the material contained on pages 2, 3, 4, and 5 of Defendant's Exhibit No. 1 of the accounts, normally referred to as a breakdown of operating expense accounts?

A. It is. It is also what the average person would consider explanatory of what is shown on page 1, under operating expenses.

Q. By what term do you customarily refer to page 1 of Defendant's Exhibit 1?

A. It is an operating statement.

Q. But that particular page, Mr. Womack. Well, to refresh your memory, is that what you in your testimony will probably refer to as a summary sheet?

[fol.109] A. Yes; yes, it is a summary sheet.

Q. Well, will you give an explanation of the figures shown on the summary sheet, being page 1 of Defendant's Exhibit 1?

A. Under operating revenues are included the sales of gas and reconnect charges within the City of Laredo, which consist of all the revenues within the City, with the exception of any revenues derived from merchandising and jobbing, for the year 1932. These revenues are classified as to type of customers that the company has, and they are so divided as between the sales made to these various types of customers.

Q. Please state what that classification of customers is—that is, stating the different classifications?

A. The classification of customers is divided as among residential, commercial, industrial, governmental, and municipal, and public utility—for fuel.

Q. Now, will you state the total operating revenues for the twelve months ended December 31, 1932, as reflected by Defendant's Exhibit No. 1?

A. $183,777.41.

Q. Please make a similar explanation of the item Operating Expenses, as reflected on this summary sheet.

[fol. 110] A. The operating expenses are divided into general classes,—the division here being production, transmission, distribution, utilization, customers, new business, general, and taxes.

Q. And please state the total amount of operating expenses reflected by page 1 of Defendant's Exhibit 1, Mr. Womack.

A. The total operating expenses as shown in Exhibit 1 amount to $125,001.40.

Q. Mr. Womack, will you please state whether the operating expenses reflected on page 1 of Defendant's Exhibit 1 contain and set forth any charge for a reserve accrual for retirements and replacements or depreciation?

A. They do not. These expenses are those costs of operation attributable to this particular calendar year.

* * * * * * *

Q. Now, are these general expenses all incurred in Laredo, and for payrolls, rents, and so forth in Laredo?

A. No, they are not.

Q. Well, what explanation have you to give, based on the accounts that you have examined and the business transactions which these accounts reflect, of this item of [fol. 111] general expenses?

A. It is the policy of these companies to have central points from which they operate and from which they have determined that certain operations can be more economically worked. Now these expenses contain a part of such of those operations from those central points as are attributable to and from which Laredo derives benefit. Some of these expenses are incurred in Laredo, so far as that is concerned.

. . . . . .

Q. Do you know the local manager at Laredo?

A. The company has a district manager located in Loredo.

Q. What is his name?

A. W. W. Stine.

Q. Are you familiar with the accounts which record, for instance, his salary and expenses?

A. I am.

Q. From the records you have examined and likewise from your knowledge of the company's operations, do you know whether Mr. Stine, in his capacity as local manager, confines his activities to Laredo, or to Laredo and other points?

[fol. 112] A. I know he does not confine his activities to Laredo only. I spoke while ago of the central points; that is one of them. His duties are not confined only to Laredo, but to other points in what the company calls the Laredo District as well, and part of his salary is attributable to and charged to those other towns in so far as these statements are concerned.

Q. To give the court and jury a general idea of these other towns can you state in what part of the State of Texas they are located?

A. Well, they are located in the southern part.

Q. And where, with reference to the City of Laredo itself?

A. Well, they are located nearby to the City of Laredo.

Q. Name some of these towns, if you recall them.

A. Aguilares, Oilton, Bruni, Roma, Mirando City and Hebbronville.

Q. Now, under what general expense account description does this local manager's salary and expenses appear in Defendant's Exhibit No. 1?

A. The principal part of his salary and expenses is included in this section, general expenses.

Q. And are his salary and expenses carried on a central operating point payroll?

[fol. 113] A. They are. I do not believe I made my answer clear just now: The principal part of such expenses as are attributable to the City of Laredo are included here in general expense.

Q. And is there any proration of his salary and expense between Laredo and the other towns, where he supervises the operations?

A. Yes, there is.

* * * * * * *

Q. Well, look at page 4 of Defendant's Exhibit No. 1; look at the item Insurance. Do you know from your examination of the books, records, and accounts of the Company and also from your knowledge of the Company's operations, how the item of insurance, both fire, workmen's compensation and all other characters of insurance, are handled for these various companies?

A. Yes, I do.

Q. Can you give a brief description of the way that is handled?

A. Yes. It is handled from a central point—the insurance activities, that is. This Insurance Department, I will term it, is available to and is used by all of the towns as well [fol. 114] as including Laredo, and it takes care of the insurance and sees that the rates are not too high and assists and saves the Company money by reason of its knowledge of insurance that the average layman would not have.

Q. Do you know what the sub-departments of that insurance department are?

A. Insurance is principally subdivided as between fire insurance, which is, I would say, the principal part of it.

Q. And what about workmen's compensation insurance?

A. Workmen's compensation insurance is one part of it;

there are a number of forms of insurance the company does carry.

Q. Do you know whether this insurance department likewise covers and includes the claims department?

A. Yes, it does.

Q. Does it likewise include and cover the safety department?

A. Yes, it does.

Q. What relation does the safety department have to do with the amount of insurance premiums paid?

A. If there are very few accidents, the premiums paid are [fol. 115] reduced and it is the function of, shall I say the insurance and safety department, to see that those accidents are held to a minimum, and that does reduce not only the cost of the insurance, but possibly saves the lives of persons.

Q. Now what explanation or differentiation would you give, Mr. Womack, with respect to the accounting done at Laredo and the accounting done at a central operating point?

A. The accounting done at Laredo is that accounting necessary to carry on the customers' accounts, to do the billing for the customers and collecting the customers' accounts, the keeping up with the stores and the materials and supplies in that district.

Q. Now, those primary accounts; what has any central operating point got to do with them and what does it do with them?

A. The central operating point compiles from those accounts, and carries, additional accounts to those carried there in Laredo. It is cheaper that most of the accounting be done in a central point than in each individual town.

Q. Now, under what subdivision of operating expense here does the central operating point accounting expense appear?

[fol. 116] A. It appears under administrative and other office salaries.

Q. And under what general heading is that carried, as reflected by this exhibit?

A. Under general expense; that is the only place it is carried—general expense.

Q. Now, Mr. Womack, I have asked you this question but I am not sure of it: Have you ascertained from your examination of the books, records, and accounts of United Gas Public Service Company and its predecessor companies,

whether the accounts reflected under the heading General Expense, reflect the cost of operations which are duplications of operations causing the other forms and description of operating expenses contained in Defendant's Exhibit 1?

A. There are no duplications at all; nothing included in general expense is included elsewhere.

Q. And have you ascertained whether or not the expenses reflected under the heading, General Expense, relate to operations which pertain to the business of selling and distributing gas in Laredo and over the system?

A. They do, and such expenses as are not attributable to that have been excluded from this statement.

[fol. 117] Q. And is a prorata of such expenses as are incurred at a central operating point for the benefit of the entire system or a particular part of the system, prorated to each locality benefited thereby?

A. Yes.

Q. And has that proration been made and is it reflected in this operating statement here with respect to Laredo?

A. It is so reflected in Exhibit 1.

* * * * * * *

Q. Mr. Womack, have you prepared an operating statement showing the results of operation in the City of Laredo for any other calendar year, other than the calendar year 1932?

A. I have.

* * * * * * *

Q. Is the operating statement about which I made inquiry reflected by the instrument that I show to you?

A. Yes; it is.

Mr. Coates: We offer this operating statement styled "United Gas Public Service Company, Laredo, Texas, Operating Statement, Twelve Months Ended December 31, 1933", and ask that the same be marked Defendant's Ex-[fol. 118] hibit Number 3 for identification.

(Thereupon, the defendant offered in evidence the statement above referred to, which was marked Defendant's Exhibit Number 3. The same is copied into this transcript upon the pages next following:)

[fol. 119] DEFENDANT'S EX. 3

Page 1

United Gas Public Service Company

City of Laredo—Operating Statement

Twelve Months Ended December 31, 1933

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$110,686.26
Commercial Sales	25,914.25
Industrial Sales	18,404.20
Government and Municipal Sales	2,071.53
Public Utility—For Fuel Sales	54.40
Reconnect Charges	1,623.00
Total Operating Revenues	$158,753.64
Operating Expenses:	
Production Expenses	$21,111.61
Transmission Expenses	10,131.28
Distribution Expenses	13,978.32
Utilization Expenses	7.91
Customers Expenses	14,136.54
New Business Expenses	6,077.61
General Expenses	39,456.00
Taxes	14,921.77
Total Operating Expenses	$119,821.04
Net Operating Revenue	$38,932.60

Defendant's Ex. 3—Continued

[fol. 120] Page 2

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Production:

Gas Purchased	$17,839.25
Purchased Gas Expenses	3,422.53
Gas Used in Company Operations	150.17
Total Production Expenses	$21,111.61

Transmission:

Pipe Line Rentals	$2,352.90
Superintendence and Operating Labor	1,298.91
Operating Supplies and Expenses	1,032.50
Measurement—Superintendence and Operating Labor	243.48
Measurement—Operating Supplies and Expenses	277.28
Dispatching Superintendence and Operating Labor	1,524.55
Dispatching—Operating Supplies and Expenses	62.29
Maintenance of Structures—Pipe Line	139.34
Maintenance of Structures—Measurement	382.71
Maintenance of Lines and Equipment—Pipe Line	2,608.60
Maintenance of Equipment—Measurement	208.72
Total Transmission Expenses	$10,131.28

Defendant's Ex. 3—Continued

[fol. 121] Page 3

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Distribution:	
Superintendence	$2,093.59
Operation of Distribution Mains	541.88
Operation of Services	138.67
Removing and Resetting Meters and House Regulators	2,301.13
Operation of Meter Department	338.48
Other Supplies and Expenses	3,168.60
Gratuitous Servicing of Installations Owned by Customers	1,140.71
Maintenance of Structures	772.51
Maintenance of Distribution Mains	683.90
Maintenance of Services	420.69
Maintenance of Meters and Regulators	2,302.43
Maintenance of Gas Receiving and District Regulators	44.25
Maintenance of Other Equipment	31.48
Total Distribution Expenses	13,978.32
Utilization:	
Work on Customers Installations	$2.41
Maintenance of Customers Installations	5.50
Total Utilization Expenses	$7.91
Customers:	
Uncollectible Accounts	$1,904.85
Customers General Labor	3,494.08
Customers Bookkeeping	3,232.07
Customers Collecting	2,453.20
Meter Reading	1,723.65
Other Customers Supplies and Expenses	1,328.69
Total Customers Expenses	$14,136.54

6—13

Defendant's Ex. 3—Continued

[fol. 122] Page 4

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

New Business:

Rentals	$287.71
Advertising	2,594.85
Sales and New Business Management and Salesmen's Salaries and Expenses	2,721.08
Other New Business Expenses	473.97
Total New Business Expenses	$6,077.61

General:

Administrative and Other Office Salaries	$16,579.11
Office Supplies and Expenses	2,049.69
Stationery and Printing	149.21
Telephone and Telegraph	972.52
Traveling Expenses	2,899.29
Rentals	1,519.15
Purchase and Stores Expenses	821.21
Law Expenses	4,438.00
Insurance	1,808.60
Supervision and Consultation Fees	2,376.61
Injuries and Damages	600.10
Audit Fees	571.06
Maintenance of General Structures	466.66
Miscellaneous	4,204.79
Total General Expenses	$39,456.00

Defendant's Ex. 3—Continued

[fol. 123] Page 5

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Taxes:	
Ad Valorem	
Independent School District	$39.10
City	6,030.47
County and State	4,515.11
Gross Receipts	
Railroad Commission	387.16
State Comptroller	1,548.63
Franchise	
Delaware	153.41
Texas	1,626.84
Federal Tax on Checks	55.29
Federal Capital Stock Tax	661.39
Transferred to Merchandise and Jobbing	95.93
Auto License	.30
Total Taxes	$14,921.77

* * * * * * *

[fol. 124] Q. Please read into the record the amount of the total operating revenues derived from sales of gas in Laredo for the twelve months ended December 31, 1933, as reflected by this statement.

A. The operating revenues, which include all revenues within the City of Laredo with the exception of merchandise and jobbing, are $158,753.64.

Q. Now, does page 1 show anything else except operating revenues?

A. It shows operating expenses.

Q. And what is the total amount of those operating expenses?

A. The total amount, exclusive of any cost of merchandise and jobbing, is $119,821.04.

Q. Do the operating expenses include any charges for accrual of a reserve for retirements, replacements, and depreciation?

A. They do not. These are costs incurred.

Q. What is the net operating revenue from these operations, as reflected by this page 1?

A. $38,932.60.

* * * * * * *

[fol. 125] Mr. Coates: We offer this instrument in evidence, and ask that it be marked Defendant's Exhibit No. 5; but as to those operating revenues which relate to prior periods, and particularly the fiscal years 1928, 1929, 1930, 1931, and 1932, it is not to be taken as offering these operating revenues in evidence as the basis for the primary determination of the validity of this fifty-five cent rate, but simply for the purpose of reflecting trends and reflecting the results of taking into account these prior operating periods.

The Court: No Objection.

(Thereupon, the instrument above referred to was marked as Defendant's Exhibit No. 5. The same is copied into this transcript upon the pages next following:)

[fol. 126]

DEFENDANT'S EXHIBIT 5

Comparison of Operating Revenues—Laredo, Texas

12 Months Ended	Total	Residential Sales	Commercial Sales	Industrial Sales	Government and Municipal Sales	Sales to Public Utilities-For Fuel	Reconnect Charges
Mar. 31, 1932.....	$204,821.21	$124,150.26	$36,426.51	$17,564.44	$2,302.28	$22,557.32	$1,820.40
July 31, 1932.....	$194,524.57	$122,888.78	$34,142.37	$17,979.29	$2,256.63	$15,400.10	$1,857.40
Oct. 31, 1932.....	$185,970.95	$119,492.09	$32,527.03	$17,766.25	$2,393.38	$12,038.80	$1,753.40
Dec. 31, 1932.....	$183,777.41	$119,489.41	$34,899.13	$16,240.83	$2,622.34	$8,790.20	$1,735.50
Mar. 31, 1833.....	$179,792.15	$121,490.87	$33,385.93	$16,226.11	$2,611.84	$4,358.40	$1,719.00
July 31, 1933.....	$170,370.32	$115,517.62	$32,097.78	$16,459.82	$2,502.30	$2,183.80	$1,609.00
Oct. 31, 1923.....	$166,002.43	$114,077.08	$31,096.28	$16,625.00	$2,499.87	$51.20	$1,653.00
Dec. 31, 1933.....	$158,753.64	$110,686.26	$25,914.25	$18,404.20	$2,071.53	$54.40	$1,623.00

It will be observed that there has been a continuous downward trend of total revenues derived from sales of gas in the City of Laredo throughout the total period of time covered by the above statement. This downward trend began to manifest itself even prior to this period, but during those earlier years revenues were classified only into two groups, "Domestic" and "Industrial", so that no comparison by classes is possible beyond the period shown here.

The decline in sales of gas for residential use is attributable primarily to the lesser number of customers served due to poorer business conditions in Laredo during the above period as compared with prior years. The year 1933 was also somewhat warmer than the average, resulting in lowered volume of sales of gas for heating in that year as compared to 1932, which was a year in which the average temperature for the heating season was approximately equal to the twenty-five year average for Laredo.

[fol. 127] Poorer business conditions are also responsible for the bulk of the decrease in commercial sales. There have been, however, some reclassifications made of customers in the past year or so, with a general tendency to put some of the customers formerly classified as commercial over into the industrial group.

This reclassification has offset to a considerable extent the decline in industrial sales, particularly in the more recent periods. The apparent increase in industrial sales for the twelve months ended December 31, 1933, is due principally to such reclassification. Until 1931, the Motor Fuel Products Company constituted one of the best industrial customers, but this company's cessation of operations caused a decrease not evident above.

Government and Municipal sales have not changed appreciably.

The sales to the Central Power and Light Company are the only revenues classified as Public Utility-For Fuel sales. Sales to this company declined in the periods shown above to $22,557.32 in the twelve months ended March, 1932, to $8,790.20 in the twelve months ended December, 1932, and to $54.40 in the twelve months ended December, 1933. Of the total decline in operating revenues for the periods shown above, approximately 50% is due to decline in sales to Central Power and Light Company.

[fol. 128] Comparison of Total Operating Revenues—Laredo, Texas

Twelve Months Ended June 30, 1929	$290,705.62
Twelve Months Ended June 30, 1930	$329,592.80
Twelve Months Ended June 30, 1931	$262,992.30
Twelve Months Ended March 31, 1932	$204,821.21
Twelve Months Ended July 31, 1932	$194,524.57
Twelve Months Ended October 31, 1932	$185,970.95
Twelve Months Ended December 31, 1932	$183,777.41
Twelve Months Ended March 31, 1933	$179,792.15
Twelve Months Ended July 31, 1933	$170,370.32
Twelve Months Ended October 31, 1933	$166,002.43
Twelve Months Ended December 31, 1933	$158,753.64

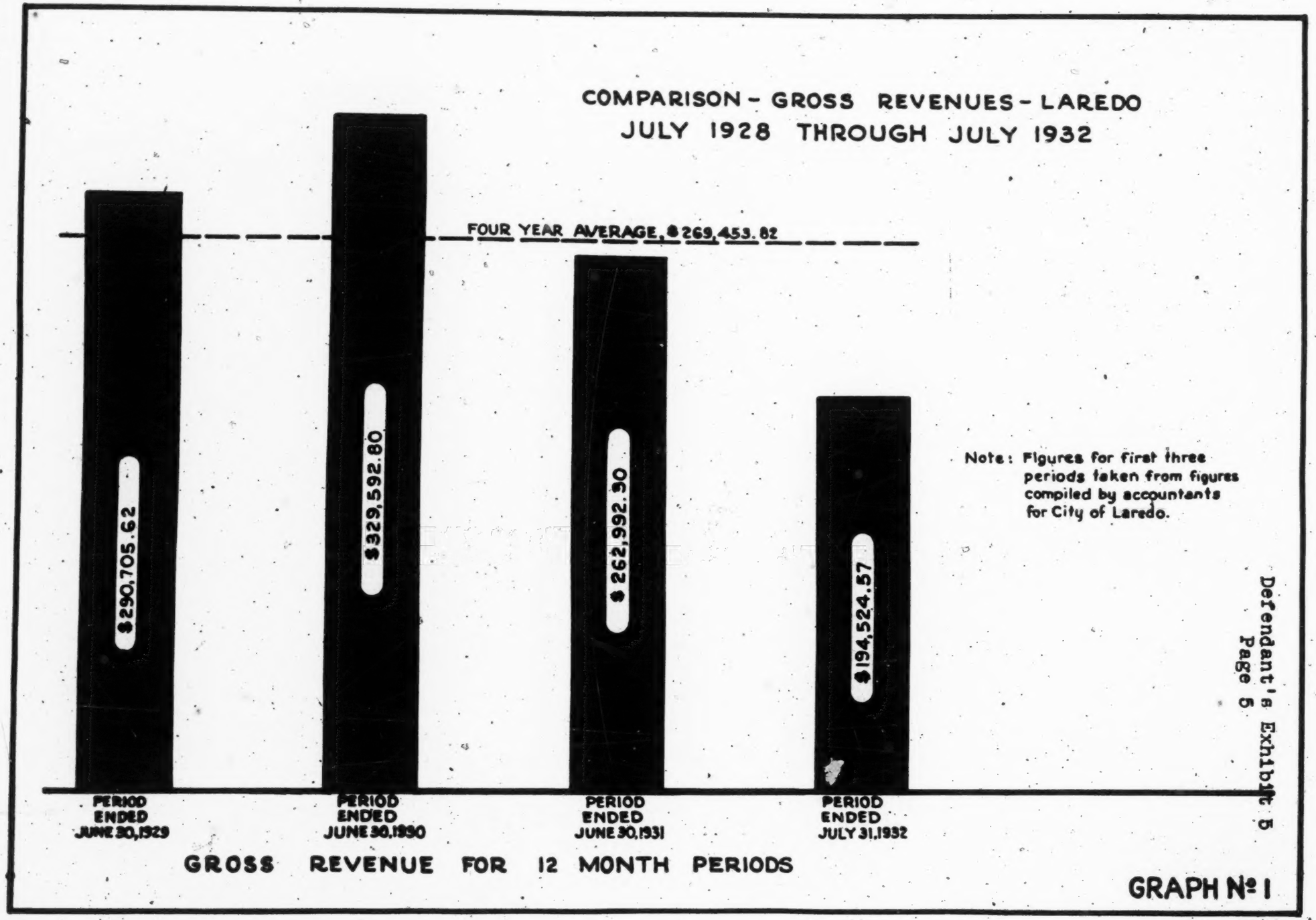
The above comparative statement indicates the trend of revenues in the City of Laredo over the past five and one-half years. The revenues shown for the twelve months ended June, 1929, 1930 and 1931 were compiled by the accountants for the City of Laredo. During those three years the classification of revenues was entirely different to that employed subsequently; the amounts for each period are, therefore, shown only in totals.

Graph 1 reflects graphically the revenues during the first four years covered by the comparative statement. It is to be noted that these revenues include non-recurring revenues from the Motor Fuel Products Company and Central Power and Light Company. The sales to the Motor Fuel Products Company had already ceased by 1932.

[fol. 129] Graph 2 indicates the extent of the decline in revenues over the past five and one-half years, and offers a comparison of the average annual revenues for the first four years, in the amount of $269,453.82, with the average annual revenues for the last two years, in the amount of $171,265.52.

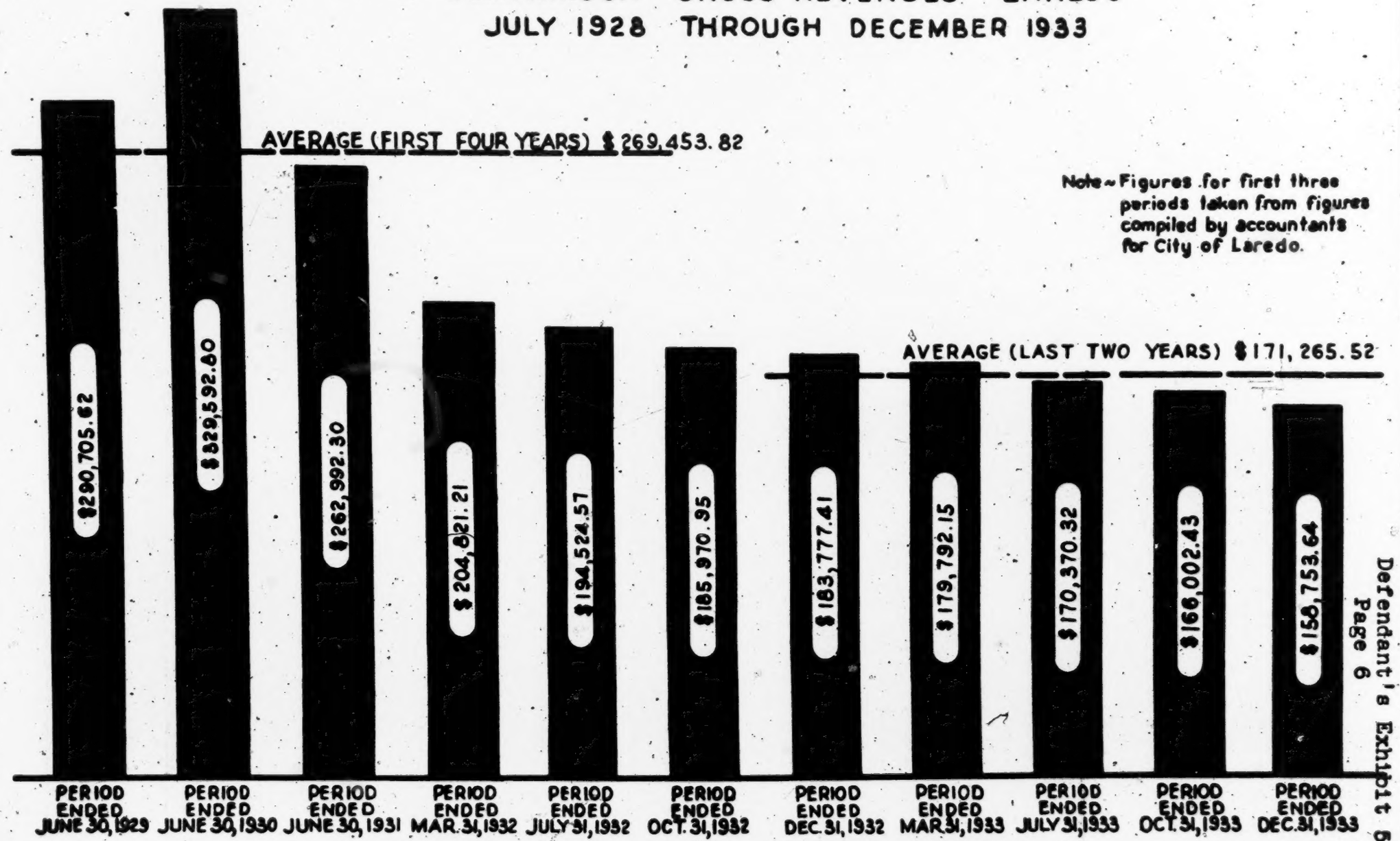
Graph 3 shows the same revenues, but separates the non-recurring from the recurring revennes, and shows also the average annual recurring revenues for the first four fiscal years, and the average annual revenues for the two calendar years 1932 and 1933.

(Here follow three photos, side folios 130, 131 and 132)



Defendant's Exhibit 5
Page 5

COMPARISON - GROSS REVENUES - LAREDO
JULY 1928 THROUGH DECEMBER 1933

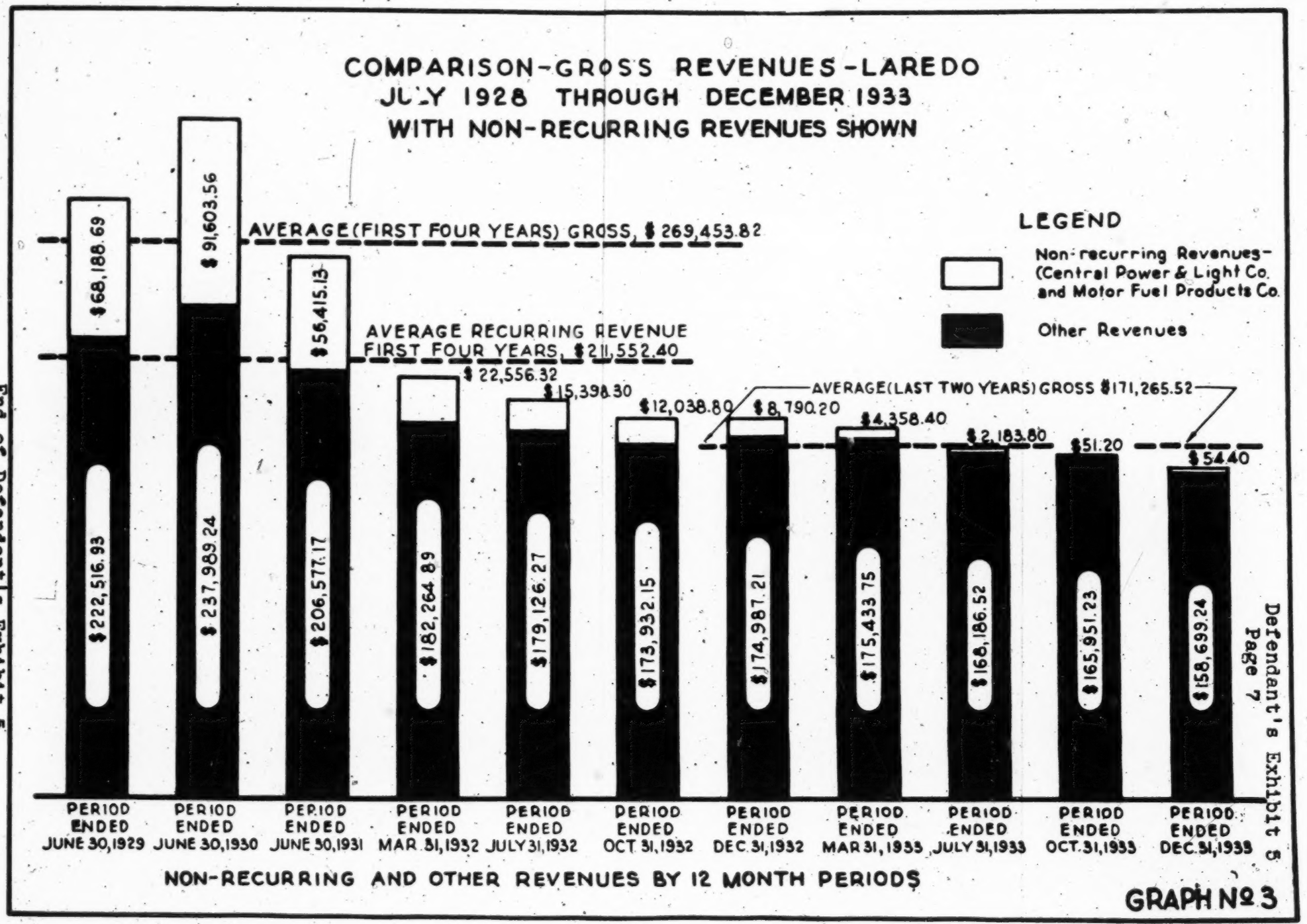


Note ~ Figures for first three periods taken from figures compiled by accountants for City of Laredo.

GROSS REVENUE FOR 12 MONTH PERIODS

GRAPH Nº 2

Defendant's Exhibit 6
Page 6



End of Defendant's Exhibit 5

Defendant's Exhibit 5
Page 7

[fol. 133] Q. Now, from what source did you derive the total operating revenue figures for the twelve months ended June 30, 1929, June 30, 1930, and June 30, 1931, as shown on page 3 of Defendant's Exhibit No. 5?

A. Those figures are copies of the figures compiled by accountants for the City of Laredo.

Q. And introduced in evidence before the Railroad Commission?

A. Yes, that is the way I got these figures.

• • • • • • •

Q. And have you made an analysis for the purpose of determining the gross revenues paid in the past by any particular industrial customer?

A. Yes.

Q. What industrial customer?

A. Central Power & Light Company.

Q. And by what public utility customer?

A. I should have said that Central Power & Light Company is a public utility customer. Industrial customer, Motor Fuel Products Company.

Q. Mr. Womack, for each of the periods reflected by Graph No. 2 of Defendant's Exhibit 5 have you ascertained [fol. 134] the gross amount of revenues paid by Motor Fuel Products Company and Central Light & Power Company in these respective twelve-month periods?

A. Yes, I have.

Q. Please turn to Graph No. 3. Have you caused Graph No. 3 of Defendant's Exhibit 5 to be expanded into the form of a chart?

A. I have.

Q. And have you that chart here in the court room?

A. Yes, it is here.

Q. Is that chart an enlarged representation of Graph No. 3 of Exhibit 5?

A. Yes, it is.

Q. Will you explain this chart to the court and jury?

A. Chart No. 3 shows the same twelve-month periods as Chart No. 2. There is this difference shown in the stacks: There is white for those revenues which are non-recurring—that is, Central Light & Power Company and Motor Fuel Products Company—whereas the second chart showed everything in black. Now, Chart No. 3 shows the average

recurring revenues for the first four years as well as the average of the total gross revenues for those periods.

Q. Take, for example, the stack representing gross rev-
[fol. 135] enues for the period ended June 30, 1929, and refer to the legend shown on Graph No. 3 and likewise on the chart. Now, how do you show the gross revenue from other customers in that period and the gross revenue from Motor Fuel Products Company and Central Light & Power Company and described as non-recurring revenue?

A. I believe you said to take the period ended June 30, 1929?

Q. Yes.

A. In the stack in white is shown the revenue derived from those two companies, Central Light & Power Company and Motor Fuel Products Company. In black is shown the revenue from all other customers during that twelve-month period.

Q. For the period ended June 30, 1929, how may one know the total gross revenues derived from all other customers than Central Light & Power Company and Motor Fuel Products Company?

A. That amount is shown in the white island included in the black part of the stack.

Q. Read the figures showing the revenues for this period about which I am inquiring from all customers other than Motor Fuel Products Company and Central Light & Power Company.

[fol. 136] A. For that period—that is, twelve months ended June 30, 1929—$222,516.93.

Q. Where is that figure shown on Graph No. 3 and the chart which is an enlargement of it?

A. That is shown on the white section included in the black part of the left-hand stack—that is, the left-hand as I face it.

Q. And where on that stack are the revenues shown received from Central Light & Power Company and Motor Fuel Products Company?

A. They are shown in the white portion of the stack.

Q. And what is the amount of those revenues?

A. $68,188.69.

Q. Now, Mr. Womack, without going through each one of those stacks, is there a similar graphic representation and differentiation between these two types of revenues reflected on Graph No. 3 and likewise the chart?

A. Yes, sir.

Q. Take the calendar year 1932 and point out how one may determine from this chart the total amount of gross revenues, the recurring gross revenues, and non-recurring gross revenues as you have used those descriptive [fol. 137] terms.

A. Non-recurring revenues are shown by the white portions of the stack; the other revenues are shown in the island included in the black portion of the stack. The total revenues will be the sum of those two figures.

Q. Read the total gross revenues, the non-recurring and the recurring revenues.

A. Total gross revenues were $183,777.41, of which $8,790.20 was non-recurring and $174,987.21 is termed recurring revenues.

Q. Now, by reference to Graph No. 3 and the chart which is an enlargement of it, make the same character of explanation for the calendar year 1933.

A. The gross revenues for the calendar year 1933 were $158,753.64, of which $54.40 was non-recurring revenue and $158,699.24 was other revenues.

Q. Now, Mr. Womack, what is the generally used and accepted meaning in the gas industry and the public utility industry of the term "non-recurring revenue"?

A. They are such revenues as the utility has received from particular customers in the past but which, due to certain conditions, the company has lost and can not rea- [fol. 138] sonably expect to receive in the future.

Q. And as the term is ordinarily used in the public utility industry and in the gas industry, what is meant by the term "recurring revenue"?

A. They are those revenues derived from sales to customers that are more or less normal from year to year.

Q. How about their recurrence in the future?

A. They are presumed to derive revenue from that type of customer or those customers in the future.

Q. Mr. Womack, have you read the opinion and order of the Railroad Commission dated June 13, 1933, in this case?

A. I have.

Q. Have you prepared in the form of an exhibit the application of certain findings contained in that order for the years 1932 and 1933?

A. I have.

• • • • • • •

Mr. Coates: Well, for purposes of identification, we offer in evidence as an exhibit the instrument styled "United Gas Public Service Company, Application of certain findings of the Railroad Commission to the years 1932 and 1933, [fol. 139] Laredo, Texas", and ask that the same be marked Defendant's Exhibit No. 6, for identification. • • •

(Plaintiffs object, first argue and then withdraw objection.)

• • • • • • • •

Mr. Coates: The Defendant, United Gas Public Service Company, now offers in evidence the instrument identified by Mr. Womack as an application of certain findings of the Railroad Commission in 1932 and 1933, Laredo, Texas, for the purpose of showing the application of the findings set forth in this exhibit to the years 1932 and 1933, and not for the purpose of proving that the value of the property is $885,000.00 nor that the three per cent for reserves or seven per cent for return is a proper amount. That is, we are offering the exhibit to show what it does show on its face.

The Court: • • • Go ahead.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 6. This exhibit is copied in this transcript on the pages next following:)

[fol. 140] DEFENDANT'S EXHIBIT 6

Application of Certain Findings of the Railroad Commission to 1932 and 1933—Laredo, Texas

The Railroad Commission of Texas, in its order dated June 13, 1933, in G. U. Dockets Nos. 49 and 63, states that "the present fair value of the properties of the company used, and useful in the gathering, transporting and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000." (p. 15). The Commission also states that "we are fixing the annual depreciation rate at 3 per cent, which we consider ample to meet the company's future requirements" (p. 12), and finds "that an annual rate of return equal to seven per cent (7%) of the present fair value of the properties as herein found is adequate" (p. 12).

At existing rates, amounts available for return for the years 1932 and 1933, after deducting 3 per cent of $885,000, are as follows:

Year	Net Revenues After Deducting 3 Per Cent of $885,000	Per Cent of $885,000
1932	$32,226.01	3.64%
1933	$12,382.60	1.40%

The net revenues for these two years, and a comparison of these amounts with the amount required to equal that 7 per cent return found to be adequate by the Commission, are illustrated in the accompanying Graph 4.

[fol. 141] If the rate of 55c net per M. C. F. fixed in the Commission's order had been in effect during the years 1932 and 1933, operating results for such years would have been as follows:

Year	Operating Revenues	Operating Expenses	Net Operating Revenue
1932	$161,637.65	$125,001.40	$36,636.25
1933	$138,256.85	$119,821.04	$18,435.81

At the Commission's 55c rate, as shown above, amounts available for return for the years 1932 and 1933, after deducting 3 per cent of $885,000 for depreciation, would have been as follows:

Year	Net Revenues After Deducting 3 Per Cent of $885,000	Per Cent of $885,000
1932	$10,086.25	1.14%
1933	$ 8,114.19*	.92%*

This result is also illustrated and compared with the Commission's adequate return of 7 per cent on $885,000 by Graph 5.

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* Red in copy.

(Here follow two photos, side folios 142 and 143)

NET AMOUNTS AVAILABLE FOR RETURN ON COMMISSION'S VALUATION AT EXISTING RATES-LAREDO

$80,000.00
$70,000.00
$60,000.00
$50,000.00
$40,000.00
$30,000.00
$20,000.00
$10,000.00

7.0%

$ 61,950.00

7% of Commission's Valuation of $885,000.00 after Deduction of 3% for Reserves.

LEGEND

Amount available for return after deducting 3% of $885,000.00 for Reserves.

3.64 %

$ 32,226.01

1.40 %

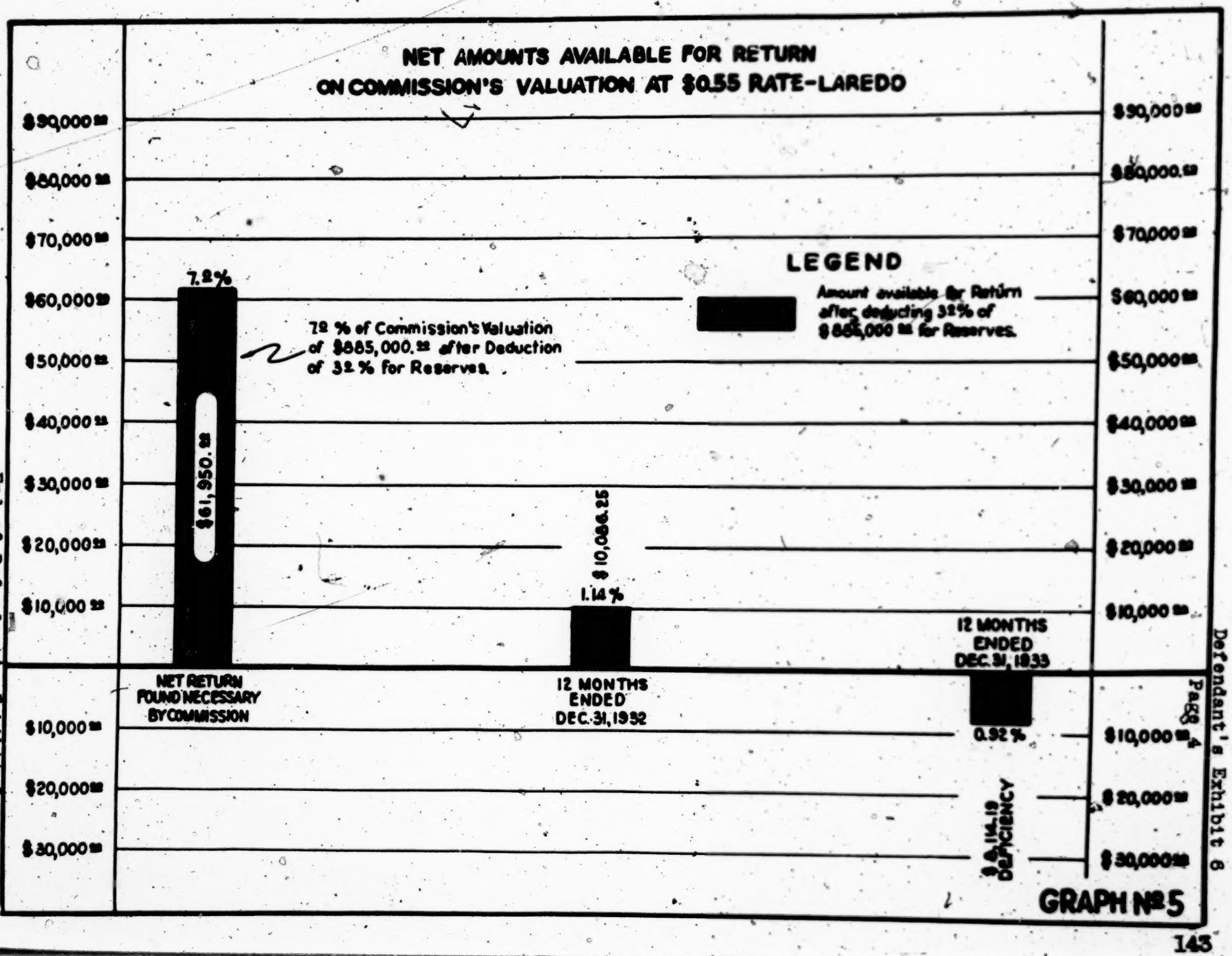
NET RETURN FOUND NECESSARY BY COMMISSION

12 MONTHS ENDED DEC. 31, 1932

12 MONTHS ENDED DEC. 31, 1933

GRAPH No. 4

Defendant's Exhibit 6
Page 3



End of Defendant's Exhibit 6

Defendant's Exhibit 6 Page 4

[fol. 144] Mr. Coates:

Q. Mr. Womack, please refer to page 1 of respondent's Exhibit No. 6. In the second paragraph of page 1 of defendant's Exhibit No. 6 you set forth a tabulation. Now, Mr. Womack, is that an estimate or a calculation?

A. That figure is a calculation.

Q. Please explain to the court and the jury how the calculation was made and on what figures it is based.

Q. This shows the years 1932 and 1933, and shows the net revenues after deducting three per cent of $885,000.00 for the year 1932 to be $32,226.01; for the year 1933 to be $12,382.60. It also shows the per cent that each of those amounts is of $885,000.00; for the year 1932 that per cent is 3.64 and for the year 1933 that per cent is 1.40.

• • • • • • •

A. This figure of $32,226.01 is a mathematical calculation arrived at by deducting the operating expenses from the operating revenues, as shown in defendant's Exhibit No. 1, and from that difference deducting three per cent of $885,000.00.

The Court: Now, to get the matter clear, as I see it, what does the $32,226.01 represent. State that just as [fol. 145] briefly as you can.

A. It represents the amount that the company would have available for return on its investment if the three per cent of the $885,000.00 is considered as correct.

• • • • • • •

Q. Now, in order to make the record entirely clear, Mr. Womack, refer to page 1 of defendant's Exhibit No. 1. Referring to that page, what are the total operating revenues as shown on that page?

A. $183,777.41.

Q. What are the total operating expenses shown on that page?

A. $125,001.40.

Q. What is the difference between operating revenues and operating expenses, or the net operating revenue?

A. $58,776.01.

Q. Now what is three per cent of $885,000.00?

A. $26,550.00.

Q. What is the difference between $58,776.01 and the amount you have stated is three per cent of $885,000.00?

A. $32,226.01.

Q. Where is this figure of $32,226.01 shown in defendant's Exhibit No. 6?

[fol. 146] A. It is shown under the title there "Net Revenues", after deducting three per cent of $885,000.00.

Q. And what per cent of $885,000.00 is $32,226.01?

A. 3.64 per cent.

Q. Mr. Womack, refer to defendant's Exhibit No. 3 and tie the figure shown for the year 1933 in Defendant's Exhibit No. 6 into page 1 of Defendant's Exhibit No. 3 in the same way as you have done for the year 1932.

A. The operating revenues as shown in defendant's Exhibit No. 3 amount to $158,753.64 and the operating expenses as shown in that exhibit amount to $119,821.04. The difference in those two figures or the net operating revenue is $38,932.60. That is all there is in Exhibit 3. Now three per cent of $885,000.00 is $26,550.00; that $26,500.00 deducted from the net operating revenue of $38,932.60 as shown in defendant's Exhibit No. 3 is $12,382.60.

Q. And what per cent of $885,000.00 is $12,382.60?

A. 1.4 per cent.

* * * * * * *

Q. Tie that figure back into the appropriate calculation in defendant's Exhibit No. 6.

[fol. 147] A. That figure of $32,226.01 is the same figure as is on page 1.

Q. Likewise tie the percentage shown at the top of that stack back into the mathematical calculation shown in defendant's Exhibit No. 6.

A. That figure of 3.64 per cent is the proportion that the $32,226.01 is of $885,000.00.

Q. By proportion do you mean percentage relationship?

A. Yes.

Q. Now in the same way will you explain and tie back into mathematical calculations contained in defendant's Exhibit No. 6 the remaining stack shown on the right-hand side of Graph No. 4, as you look at it?

A. That figure of $12,382.60 is the amount that is shown

on page 1 of the exhibit referred to and the 1.40 per cent is the percentage that the $12,382.60 is of $885,000.00.

Q. Now what rates yielded and produced the amounts for return effected by this calculation to which you have just testified * * *.

A. The present rates in effect in the City of Laredo.

Q. Does that include the residential rate which has normally been referred to and described for convenience in the testimony here as the 75 cents rate?

[fol. 148] A. It is.

Q. Now, Mr. Womack, turn to page 2 of defendant's Exhibit No. 6. On the top of page 2, and in the first paragraph thereof, is there a tabulation of certain calculations?

A. There is.

Q. For what accounting period are these calculations made?

A. For the calendar years 1932 and 1933.

Q. What is the heading of the first column of dollar figures, reading from the left?

A. Operating revenues.

Q. Please explain to the court and the jury how you arrived at the dollar figure shown under this heading Operating Revenues?

A. That is the mathematical calculation of applying the 55 cents rate to the volume of gas sold.

Q. To residential consumers?

A. To residential consumers.

Q. How about revenues from classes of consumers other than residential?

* * * * * * *

A. The answer to that last question should have been that the revenues from other consumers are computed at the [fol. 149] rates in effect at the present time.

Q. And are they the identical revenues received from classes of customers during these accounting periods, other than residential?

A. They are.

Q. From what exhibits now in evidence are the figures taken which are shown under the column headed Operating Expenses, on page 2 of defendant's Exhibit No. 6?

A. They are taken from Exhibits 1 and 3.

Q. Explain the mathematical calculation by which the

figures shown under the last column of this tabulation headed Net Operating Revenues, are arrived at.

A. Those figures are differences between the first two columns. That is, it is the difference between the operating revenues and the operating expenses.

Q. For example, for the year 1932?

A. The operating revenues for the year 1932 are $161,637.65; the operating expenses are $125,001.40 and the difference or the net operating revenue is $36,636.25.

Q. And for the year 1933 is the calculation precisely the same?

A. It is.

[fol. 150] Q. Now what is shown in the second paragraph on page 2 of defendant's Exhibit No. 6?

A. The net revenues at the Commission's rate of 55 cents, after deducting three per cent of $885,000.00 . . .

Q. Now, take the calculations and figures shown in the first paragraph on this page 2, and show how the figures under the column in the second paragraph on page 2, headed Net Revenues after deducting three per cent of $885,000.00 were arrived at.

A. The figure $10,086.25 is the difference between three per cent of $885,000.00 and the net operating revenues shown above of $36,636.25.

Q. Now, state those two figures in dollars.

A. The net operating revenue shown above is $36,636.25; after deducting $26,550.00 from that figure, the net amount for return is $10,086.25.

Q. Now, what is the $26,550.00 which you mentioned?

A. That is three per cent of $885,000.00.

Q. Now, what per cent of $885,000.00 is $10,086.25?

A. 1.14 per cent.

Q. And in what column on page 2 of defendant's Exhibit No. 6 does that percentage figure appear, if it does appear?

[fol. 151] A. On the right hand column.

Q. And are the figures which you have just given for the calendar year 1932?

A. They are.

Q. Now, are the figures which are shown in the second paragraph on page 2 of defendant's Exhibit 6, as the figures for the year 1933, arrived at by similar calculations to those for the year 1932?

A. They are.

. . . . . .

Q. Mr. Womack, I don't know that the record is entirely clear that your computation of operating revenues at the fifty-five cent rate is actually a computation. Will you state as nearly as you can again how you arrived at the figures shown in the column headed "Operating Revenues" on page 2 of Defendant's Exhibit 6.

A. That is a mathematical calculation of fifty-five cents multiplied per M. C. F. sold to residential customers in the city of Laredo, to which has been added revenue actually derived from all other classes of customers.

Q. Now, are those figures calculated to represent as closely as possible all bills payable within ten days?

A. Yes, they are.

* * * * * * *

[fol. 152] Cross-examination.

Questions by Mr. Lange:

Q. All right; now which is the next item that you adjusted?

A. I decreased uncollectible accounts $219.72.

Q. Why was that done?

A. The reason for this reduction was that uncollectible accounts occurring on the pipe line side, and this was all on the transmission side, should not be applied as against the City of Laredo, and I did not charge any uncollectible accounts into the City of Laredo except those that were incurred there.

* * * * * * *

Q. Well, in the pleadings that the company now files, on page 23 of its first amended original answer, this statement appears: "The historical cost of said property exceeds $1,200,000.00". If there is no basis on which to predicate the historical cost, how did the company arrive at that figure?

A. That figure is the ledger figure of costs that were charged as against fixed capital. Now, that does not necessarily mean that all of the costs were capitalized that should have been. It does not mean the records were complete and that there should not have been additional charges there that were never made. I do not recall your particu-[fol. 153] lar figure there, nor have I seen that, but that is generally true.

* * * * * * *

A. The total delivered to the Laredo area was twenty-seven thousand four hundred and thirty-one M. cubic feet at a pressure base of two pounds point fourteen from the Jennings field.

Q. During the twelve-month period ended December 31, 1933?

A. Yes.

* * * * * * *

Q. Now, with reference to the new business expense, on page 4 of the Exhibit, you gave us yesterday the Laredo district apportionment. Can you give us the general office and the San Antonio district apportionment of that—the way that is apportioned? Is that apportioned in the three districts?

A. There is a part of the new business expenses included here apportioned from the Laredo district, from the San Antonio district, and from those accounts carried in the Houston office.

Q. Yes. Now, you gave us yesterday the Laredo. Now, can you give us the portion apportioned from the Houston office, and also that from the San Antonio district?

[fol. 154] A. The amount of new business expense apportioned from the San Antonio district to the city of Laredo is $21.15.

Q. Now, the total from the Houston office?

A. The total amount of new business expenses as carried in the accounts on the Houston office records and apportioned to the city of Laredo is $2,768.24.

Q. That is from the Houston office?

A. That is from the accounts carried in the Houston office.

* * * * * * *

Redirect examination.

Questions by Mr. Coates:

Q. Now, in your judgment, and from your study of the distribution of these expenses, do you think, or not, that the distribution and apportionments made, which you have reflected here, conform with a reasonable degree of accuracy, to the actual facts with respect to the actual incurrence of those expenses?

A. Yes, I do.

Q. And as incurred for the property or the section of property for which the expense was incurred?

A. I do.

[fol. 155] Q. Mr. Womack, in your cross examination I believe you made a distinction between the price of gas purchased; that is, the amount paid the independent well owner, and the cost of purchased gas?

A. Yes, I believe I made that distinction.

Q. And will you explain what that was; what was your basis for that distinction?

A. The price of purchased gas is that amount of money that is paid for the gas that is bought, only.

Q. Paid to whom?

A. To the owner of such gas. The cost of purchased gas includes expenses other than merely the price paid to the gas owner for his gas.

Q. Why is that?

A. Well, it includes such expenses as geological expense, land and lease expense, and it includes just a number of different kinds of costs.

Q. Well now, does this company, where it purchases gas from a well owner, and does not either own the lease or the well, incur any geological expense?

A. Yes.

Q. In connection with that property that it does not own?

A. Yes.

[fol. 156] Q. Do you know whether or not it incurs any mapping expense?

A. Yes, it does.

Q. Does it incur any expense of the chemical department?

A. Yes.

Q. Does it incur any expense of the land and lease department?

A. Yes.

Q. Is gas purchased from an independent well owner without carefully defining the boundaries of his lease and the examination of his title and so on?

A. No, the company makes an examination of those titles.

Q. And what, with respect to measurement expense?

A. Well, the company maintains a measurement department and part of its function is in connection with the

measurement of gas and the production of gas, whether it is purchased or produced.

Q. That is, you have to measure the gas that you purchase, and read those meters where you purchase the gas, as well as where you produce the gas?

A. That is correct.

[fol. 157] Q. And is there likewise any administrative expense which in your judgment as an accountant should properly be distributed to purchased gas?

A. Yes.

Q. And how about the accounting?

A. There is accounting expense in connection with purchased gas.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. Mr. Womack, have you your Exhibit 1 there, please, sir?

A. Yes.

Q. And Exhibit 3?

A. Yes.

Q. Exhibit 1, under the head of Residential Sales, I believe your exhibit shows that for the year ended December 31, 1932, your gross revenue was $119,489.41; is that correct?

A. Derived from residential business, it is.

Q. Yes, derived from residential business; and for the year ended December 31, 1933, the gross revenue derived from residential business was $110,686.26?

A. Yes.

Q. Is that correct?

A. Yes.

[fol. 158] Q. That represents a loss in the difference of those figures for the years 1932 and 1933?

A. Yes.

* * * * * * *

Q. What I am getting at is the number of residential meters there December 31, 1932, and the number on December 31, 1933, the number of meters for residential consumers?

A. What do you want, just the months of December only?

Q. I want the number of meters in use serving gas to residential consumers on December 31, 1932, or the average for the year that you set up at that time?

* * * * * * *

A. The average for the year 1932 was 4214; the average for the year 1933 was 4177.

Q. There is a decrease in the number of meters to the extent of the difference in those figures?

A. A slight decrease—37.

Q. Has there been a decrease in the number of meters from that date, December 31, 1933, down to date?

A. I don't have any figures that I have made up during this year—I mean on business done this year.

Q. Well, there is a decrease in the number of domestic consumers—residential consumers in 1933 over 1932?

[fol. 159] A. There was a decrease of 37.

Q. There was a decrease in the amount of gross revenue, as you have just testified about?

A. Yes.

* * * * * * *

Q. Now, Mr. Womack, turn to Exhibit 3 at page 4, if you please, a moment. On the question of Operating Expenses for the twelve months ended December 31, 1933, that exhibit there undertakes, as I understand, to give the amount of such expenses allocated to Laredo for that period?

A. It gives the amount that is apportioned or that has been distributed to Laredo for that period.

Q. For that period?

A. Yes.

Q. Let's get this clear. What is the distributing company that is distributing gas in the City of Laredo? What is the name of that concern?

A. United Gas Public Service Company.

Q. Well, isn't there a subsidiary, Texas Border Gas Company?

A. No.

[fol. 160] Q. It took the place of the Texas Border Gas Company—the United Gas Public Service Company took the place of the Texas Border Gas Company as a distributor in the City?

A. Yes.

* * * * * * *

Q. Did the United Gas Public Service Company likewise take the place of the South Texas Gas Company—the transmission company?

A. Yes.

Q. So those two companies are out of existence; is that right?

A. Yes.

Q. And the United Gas Public Service Company is doing all of the work that they formerly did; is that correct?

A. Yes.

Q. What is the total amount, Mr. Womack, of the Supervision and Consultation fees paid by the United Gas Public Service Company for the period—for the twelve months ending December 31, 1933, of which Laredo pays a part?

A. $116,578.87 for 1933.

[fol. 161] Q. What is that figure?

A. $116,578.87.

Q. That is the total amount for that item paid by the United Gas Public Service Company?

A. It is.

Q. And the amount allocated to the City of Laredo was as set up in this exhibit, $2,376.61?

A. That is correct.

Q. To what company were those Supervision and Consultation Fees paid?

A. Electric Bond & Share Company.

* * * * * * *

[fol. 162] Direct interrogatories:

Mr. Coates: We now desire to read the Direct Interrogatories propounded by the defendant, United Gas Public Service Company, to the witness, E. B. Neiswanger.

Direct Interrogatory No. 1. * * *.

Answer. My name is E. B. Neiswanger, my age is 55 and my present address is 710 Nixon Building, Corpus Christi, Texas. My present occupation is Vice President in charge of operations of the Central Power and Light Company.

* * * * * * *

Direct Interrogatory No. 4. • • •.

Answer. In January, 1928, I was President and General Manager of the Central Power and Light Company and continued in that capacity until January, 1933, since which time I have been Vice President in charge of operations.

Direct Interrogatory No. 5. Does the Central Power and Light Company own a power plant located at the City of Laredo, Texas?

Answer. Yes.

• • • • • • • •

Direct Interrogatory No. 7. Please state, if you know, whether or not the Central Power and Light Company has ever purchased natural gas for use in its Laredo power plant from the United Gas Public Service Company.

Answer. Yes.

[fol. 163] Direct Interrogatory No. 8. If you have answered the preceding interrogatory "yes", then please state whether or not the Central Power and Light Company has purchased natural gas for use in its Laredo power plant from the United Gas Public Service Company and its predecessors in title during the period from January 1, 1928, down to the present time.

Answer. Yes.

• • • • • • •

Direct Interrogatory No. 9-(d). • • • will you please examine such records and state what total yearly amounts were paid by the Central Power and Light Company to United Gas Public Service Company for gas delivered to the Laredo power plant of the Central Power and Light Company during the following periods of time: Year 1928; Year 1929; Year 1930; Year 1931; Year 1932; Year 1933 from January 1st to present time.

[fol. 164] Answer. Year 1928—$65,539.96; Year 1929—$73,339.73; Year 1930—$71,776.18; Year 1931—$29,111.32; Year 1932—$8,793.26; Year 1933—$57.90 from January 1, 1933, up to present time. (The fiscal year ending December 25th.)

• • • • • • •

Direct Interrogatory No. 11. • • • please state, if you know, why the amounts paid for gas by the Central Power

and Light Company beginning with the year 1931 show a decline in comparison to the amounts paid in the preceding years.

Answer. During the year 1931 the Central Power and Light Company completed the construction of its interconnected electric transmission system thereby connecting the electric distribution system in the city of Laredo and electric lines in the Laredo area to the main transmission system and other electric generating plants then operated by the Central Power and Light Company. At the time this interconnected electric transmission system was completed the Central Power and Light Company was able to serve the [fol. 165] electric load at and near Laredo from the central transmission system instead of generating the electric energy at the electric generating plant at Laredo as had previously been done. With the decline in the total of the electric energy generated at the Laredo power plant, the amount of money paid for gas used at this plant began to decrease as is reflected in the tabulation of monies paid for gas under subdivision "b", Interrogatory No. 9, above.

Direct Interrogatory No. 12. • • •.

Answer. Beginning during the year 1932 and continuing throughout 1932 and 1933, the electric generating plant at Laredo was placed on an emergency standby operating basis, which means that this plant was operated only at such periods as was necessary in order to generate such additional electric energy as from time to time it was not economical or possible for such electric energy to be delivered to the distribution system in Laredo from the central transmission system. During the entire year of 1933 this plant was only operated during short periods as might be deemed advisable in order to insure that the equipment in this plant was in proper operating condition so that the equipment could have been used for generating electric energy over a period of time had it been found necessary to do so on account of the [fol. 166] transmission system being entirely out of service due to conditions reasonably beyond the control of the operating company. Inasmuch as the transmission system referred to above has two distinct sources of electric energy supply, the operating company was able to render continuous electric service at Laredo without operating the Laredo emergency standby plant other than during the periods that the plant was operated for test purposes.

Direct Interrogatory No. 13. • • •.

Answer. Inasmuch as the inter-connected transmission system described above has been completed and adequate service rendered to the city of Laredo therefrom, it is very definite that future uses of gas to be purchased from the United Gas Public Service Company for operating the electric generating plant at Laredo will be limited to only such gas as might be necessary from time to time to operate this plant for short periods to insure that the generating equipment is in proper operating condition, or for the actual generation of electric energy at Laredo during emergency periods when the electric transmission system is wholly out of service on account of emergencies beyond the control of the operating company.

Direct Interrogatory No. 14. Please state whether or not in your opinion the amount of gas purchased by the Central Power and Light Company for its Laredo power plant [fol. 167] from the United Gas Public Service Company during the expired portion of the year 1933 is indicative of the probable usage in the future under normal operating conditions. Please explain.

Answer. Yes, as this plant will only be used for test purposes and emergency service as explained under the previous interrogatory.

* * * * * * *

Direct Interrogatory 15-(a). * * *.

Answer. It is the intention of the management of the Central Power and Light Company to purchase gas from the United Gas Public Service Company for the operation of its Laredo power plant only in cases of emergency operation of this plant. By emergency operation is meant that the Laredo power plant will only be operated during such periods of time as the inter-connected electric transmission system of the Central Power and Light Company is wholly out of use due to reasons reasonably beyond the control of the operating company. This particular interconnected electric transmission system is connected to various other electric power plants where electric energy is now produced such generating stations being so located that one section of the transmission system could be out of service without affecting the delivery of electric energy to Laredo from [fol. 168] another section of the transmission system. Since this double feed is now provided from the transmission

system with an adequate source of supply to take care of the present Laredo load from two distinct sources of production, it will be extraordinary conditions only that would cause both divisions of the transmission system to be inoperative at the same time.

Direct Interrogatory No. 16. Did you on July 21, 1933, write a letter addressed to United Gas System, Rusk Building, Houston, Texas, attention Mr. H. E. Randall, Industrial Department, pertaining to gas purchased from the United Gas Public Service Company?

Answer. Yes.

* * * * * * *

Direct Interrogatory No. 16-(d). If you have refused to attach the original carbon copy, then will you attach a true and correct copy thereof to this deposition and have the notary mark it Exhibit B for identification? Have you done so? If not, why not?

Answer. Inasmuch as the original carbon copy of the above mentioned letter is not submitted herewith we are attaching hereto a true and correct copy as an exhibit in this case.

[fol. 169] * * * * * * *

July 21, 1933.

United Gas System, Rusk Building, Houston, Texas.

Attention Mr. H. E. Randall, Industrial Department

DEAR MR. RANDALL:

Complying with your request of July 18, we are giving you the following purchase figure of gas taken from our records and which figures represent the cost of gas used in our Laredo power plant, which gas was purchased from your company during the years 1928 to '32 inclusive:

1928	$65,539.96
1929	73,339.73
1930	71,776.18
1931	29,111.32
1932	8,793.26

Gas purchased during the first five months of 1933 amounted to $24.40.

The decline in purchased gas in 1931 was occasioned by the completion of our inter-connecting transmission system which made it desirable for us to produce our power at the newer and more efficient plants.

In 1932 we continued to use a small amount of gas until the hydro plant on the Rio Grande at Eagle Pass was placed in operation, after which we operated the Laredo plant [fol. 170] only as an emergency unit. For instance, in September during the floods on the Rio Grande and Devils Rivers.

We have shown the gas requirements for the first five months of 1933 as indicating the possible usage under normal operating conditions. Since our entire system is now inter-connected and the plants on the Devils River, at San Benito, Corpus Christi and Victoria are all working together and inasmuch as the Laredo plant is inefficient and obsolete, this will only be operated as a standby unit for the protection of the service.

As to our possible future requirements of gas for this station, we do not have at this time any plans for operating this station other than in emergencies.

Trusting this is the information desired, I am,

Yours very truly, E. B. Neiswanger, Vice President.

ebn/k.

* * * * * * *

H. E. RANDALL, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. H. E. Randall.

[fol. 171] * * * * * * *

Q. By whom are you employed now?
A. United Gas Public Service Company.
Q. In what capacity?
A. Manager of industrial sales.

* * * * * * *

Q. Mr. Randall, do you know of your own knowledge whether or not there is a refinery in or near Laredo called the Motor Fuel Products Company?

A. Yes.

Q. Are you acquainted with the business, affairs and the nature of the operation or the past operation of that refinery?

A. Yes.

Q. Is that refinery now in operation?

A. No, sir.

Q. How long has it been since it has been operated?

A. To my best recollection the plant was shut down in the early part of 1931.

Q. Is that refinery owned by one of the operating companies of United Gas Public Service Company?

A. Yes.

Q. Do you know why that refinery was shut down?

A. Because it was losing money.

Q. Do you know the extent to which it was losing money?

[fol. 172] A. From the time the plant was started until we closed it down, the sum was some $501,800 and some odd cents.

* * * * * * *

Q. Mr. Randall, based on your knowledge of the past operations of this plant, its operating costs, its location and the nature of the markets, and the location with reference to its markets for its refined products, will you state whether or not in your opinion this Motor Fuel Products Company within any reasonable time in the future will be reopened and recommence operations?

A. No, sir.

Q. Mr. Randall, do you have anything to do with the sale of gas to Central Power & Light Company, or did you, for its Laredo electric generating plant?

A. Yes.

Q. When the sales of gas to that plant commenced to decline, what if anything did you do?

A. I called upon the officials of the Central Power & Light Company, Mr. Neiswanger and others.

Q. For what purpose, Mr. Randall?

A. To determine if they were going to operate their plant and continue their operations or what could be done to have

that plant proceed—what we could do in the way of having [fol. 173] that plant go ahead.

Q. Now, during that period of time, did you make any investigation with respect to the efficiency of the plant of Central Power & Light Company, located there at Laredo?

A. Those records were shown to me by their chief engineer, Mr. Persons, of the efficiency of their different plants.

Q. How is the efficiency of an electric generating plant, with respect to the amount of fuel required, ordinarily and usually determined by the gas and electric industry?

A. So many heat units per K. W.

Q. Have you been through the Laredo plant of the Central Power & Light Company?

A. Yes.

* * * * * * *

Q. In your opinion, based on your knowledge of the power generating stations of Central Power & Light Company and the state of efficiency of the Laredo plant, will the power generating station of Central Power & Light Company located at Laredo be operated for the future, except for emergency and standby purposes?

A. I could not say that the plant would not be operated. I would say that it would be uneconomical to operate the plant.

[fol. 174] Q. Why?

A. On account of the difference in efficiency of that plant and other plants, or that might be obtained with a more modern plant. I would say it would be uneconomical to operate that plant.

The Court: I don't believe you understood that question: He did not ask you whether it would be economical to operate the plant; he asked you whether or not in your opinion it would be operated in the future, except as standby equipment.

A. In my opinion, it would not be operated except as an emergency plant.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

* * * * * * *

Q. You don't know then, the factors that caused Motor Fuel Products Company to shut down, do you?

A. I have a statement of the Motor Fuel Products, which showed those factors.

Q. Was one of those factors very high salaries paid to the officers of the company?

A. I do not think that was the cause or that it had very much bearing on it.

Q. You don't think it had very much bearing on it?

[fol. 175] A. No, sir.

Q. That's all.

Questions by Mr. Coates:

Q. Since the matter has been gone into, do you know the factors which in your opinion would prevent the profitable operation of that plant at this time, or at any time during the year 1932 or 1933 or for a reasonable time in the future?

A. I think I can state some of the factors, yes.

Q. Will you please state some of the main ones?

A. One thing is their crude production that was used in the plant, that had a low gasoline content, and they had to use considerable natural gasoline to blend with that to make a gasoline that could sell. Another, was that the markets were not there for the refined products.

Q. Why didn't they ship it to some market?

A. The transportation charges out of Laredo were too high to ship it to a market and compete with other refineries.

Q. And does that condition still prevail?

A. Yes.

* * * * * * *

Questions by Mr. Bobbitt:

Q. The operation of this plant furnished an outlet for a large amount or a large market for industrial gas consump-

[fol. 176] tion, did it not?

A. No, sir; I wouldn't say it was a large market for industrial gas.

Q. They burned a lot of natural gas in that refinery didn't they, there in Laredo, when it was in operation?

A. Do you mean large sales, compared with other refineries?

* * * * * * *

Q. Approximately how much gas did this Motor Fuel Products Company consume when it was in operation?

A. If I might show the exact amount here, I think I have it. For the period 1928, through March, 1929, it was $2,959.00; and from April 10, 1929, to December 31, 1929, it was $7,103.60. January 1, 1930, through December 31, 1930, it was $16,347.80.

Q. That is money paid by that concern for natural gas?

A. Yes.

Q. To the Texas Border Gas Company?

A. Yes.

Q. And the same concern owned both of them?

A. Yes.

* * * * * * *

[fol. 177] W. W. STEIN, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.

A. W. W. Stein.

Q. Where do you live, Mr. Stein?

A. In Laredo, Texas.

Q. How long have you lived at Laredo?

A. Since 1910.

Q. In what business are you engaged, Mr. Stein?

A. In the natural gas business.

Q. And how long have you been engaged in that business?

A. Since October, 1910.

Q. By whom are you now employed?

A. United Gas Public Service Company.

Q. And in what capacity?

A. The district manager of the Laredo district.

Q. District manager of the Laredo District?

A. Yes, the Laredo district.

Q. And do you cover distribution and transmission and production operations, or what do you cover?

A. I cover distribution operations.

Q. Mr. Stein, in 1929, with what company or companies were you connected?

[fol. 178] A. In 1929 I was connected with the South Texas Gas Company.

Q. In what capacity?

A. As vice president and manager.

Q. What was the situation in 1929, with respect to the gas supply of South Texas Gas Company, and prior thereto?

A. We were looking for an additional supply.

Q. Why?

A. Because we had the highest load we had ever experienced at that time, and also we had prospects of an increased load.

Q. And did you have enough gas to supply your present and your prospective increased load?

A. We did not.

Q. Did you undertake to get an additional supply of gas?

A. I did.

Q. For sale in what market, what general market?

A. In the Laredo district.

Q. State whether or not at that time you negotiated a contract for an additional supply of gas?

A. We did.

Q. What companies were parties to that contract?

A. The South Texas Gas Company and the Southern Gas Company.

[fol. 179] Q. Have you the original of that contract, and likewise some photostatic copies of it, with you?

A. I have.

* * * * * * *

Q. Have you compared the original signed copy of this contract, Mr. Stein, which I now hold in my hand, with the photostatic copies of the contract which you have?

A. I have.

Q. And does the photostat contain a picture of each page in the original contract?

A. It does.

Q. The original of the contract having been compared with the photostat, we offer the photostat in evidence, and ask that the same be marked Defendant's Exhibit No. 7 for identification.

(No objection.)

(Thereupon the Contract so identified by the witness was offered in evidence and the contract is set out on the pages next following:)

[fol. 180] DEFENDANT'S EXHIBIT No. 7

Agreement Between Southern Gas Company and South Texas Gas Company.

This Agreement made and entered into this 1st day of November, 1929, by and between Southern Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "Southern", party of the first part, and South Texas Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "South Texas", party of the second part,

Witnesseth:

Whereas, Southern is the owner of a gathering system in the Carolina-Texas Gas Field in Webb County, Texas, and has contracts for the purchase of gas from wells located in said field, from which said wells it is now taking gas into said gathering system; and

Whereas, South Texas owns a gas pipe line extending from said Carolina-Texas Gas Field to the City of Laredo, Texas, and desires to make pipe line connections to the gathering system of Southern and purchase from Southern all gas which Southern may purchase from wells in said [fol. 181] Carolina-Texas Gas Field and take into said gathering system;

Now, Therefore, for and in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

I

Southern agrees to maintain and keep in good repair its said gathering system in the Carolina-Texas Gas Field,

and further agrees that it will from time to time negotiate for the purchase of gas from any wells which may be completed near its gathering system, and if satisfactory purchase arrangements can be made, will connect such wells into said gathering system.

II

Southern agrees that South Texas shall have the right to make necessary changes in said gathering system, and to take up and re-lay such parts of said gathering system as may be necessary to enable South Texas to make proper connection of its pipe line to said gathering system. Southern further agrees that South Texas shall have the right to reimburse itself for all expense incurred in making such necessary changes by withholding one-sixth (1/6) of the first monies accruing to Southern under this agreement, as hereinafter set out.

[fol. 182]

III

South Texas shall operate said gathering system and pay all the cost of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system as well as all measuring equipment, shall make any and all new well connections and shall regularly calibrate all meters recording deliveries of gas into said gathering system.

IV

Southern will continue, in its own name, to purchase and receive into said gathering system, and will account therefor to the owner of each respective well, all gas from wells now connected to said gathering system or which may hereafter be connected to said system.

V

In cases where gas wells owned by South Texas, or controlled by South Texas under gas purchase agreements, can be connected with the said gathering system of Southern, providing such gas can be taken through said gathering system more advantageously than such gas can be taken direct into the lines of South Texas (in order to avoid duplication of gathering lines in this Field), South Texas

shall allow Southern to connect such wells to its gathering system and to transport said gas through said gathering [fol. 183] system and deliver the same into the pipe line of South Texas. For all such gas so taken into said gathering system of Southern, South Texas shall pay Southern, as consideration for the use of said gathering system in transporting such gas, the sum of one cent (1¢) per thousand cubic feet, measured at two pounds above an assumed absolute atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch.

VI

South Texas shall purchase and receive from Southern under this agreement all gas which may be received in said gathering system from all wells connected thereto (except gas taken from wells owned or controlled by South Texas), it being understood, however, that South Texas shall purchase and receive under this agreement an average minimum of two million cubic feet of gas daily, provided Southern is able to deliver that amount of gas from wells connected to said gathering system. The volume of gas delivered to South Texas hereunder shall be taken to be the combined total of all gas delivered from the wells into said gathering system as measured at the wells (except gas taken from wells owned or controlled by South Texas), it being intended by this arrangement that South Texas will assume all loss from leakage in gathering lines. South Texas shall have the right to use said gathering system to the full capacity thereof for the transportation and deliv- [fol. 184] ery of said gas from the wells to its pipe line system.

VII

For all gas which South Texas taken and receives from Southern hereunder, South Texas shall pay Southern at the rate of six cents (6¢) per thousand cubic feet measured at two pounds above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch. Billing for this gas by Southern to South Texas shall be based upon the combined meter readings of each well delivering gas into said gathering system. Statements will be rendered by Southern to South Texas as quickly after the end of each month as practical, and payment shall be

made by South Texas to Southern on or before the twentieth day of each month covering all gas taken during the preceding calendar month.

VIII

This agreement shall continue and remain in force as long as the wells which are connected with said gathering system or which may hereafter be connected therewith are capable of delivering gas into said gathering system in commercial quantities, unless sooner terminated by agreement of the parties hereto.

IX

This agreement shall extend to and be binding upon the [fol. 185] respective successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have executed this instrument in two counterparts, each of which shall constitute an original, as of the day and year first above written.

Southern Gas Company, (Signed) by L. A. Nordan, Vice President.

Attest: N. N. Oille, Assistant Secretary.

South Texas Gas Company, (Signed) by W. W. Stein, Vice President.

Attest: (Signed) Leo Wright, Assistant Secretary.

End of Defendant's Exhibit No. 7.

* * * * * * *

[fol. 186] Q. Mr. Stein, outline briefly, but comprehensively, the circumstances leading up to the execution of this contract.

A. In 1929, as I stated before, we were in the market for additional gas supply, and in looking around for it, I found that the Southern Gas Company had a gathering system in the Carolina-Texas field, connected to a number of wells from which they were not taking gas at that time, and had not been for some time previous. In inquiring, I found that they did not expect to take gas from that field.

Q. Now, Mr. Stein, did what is commonly known and

has been referred to in this record as the Moody-Seagraves interests have an interest in the South Texas Gas Company at that time?

A. They did.

Q. That is, a stock interest?

A. A stock interest.

Q. Did they likewise have a stock interest in the Southern Gas Company at that time?

A. They did.

Q. Were you at that time an officer of or in any way connected with the Southern Gas Company?

[fol. 187] A. I was not.

Q. And I believe you stated you were a vice president of South Texas Gas Company?

A. Yes.

Q. State whether or not you were in charge of and responsible for the operations of that company in the Laredo area?

A. I was.

Q. And who was the executive or who were the executives responsible for the operation of the Southern Gas Company in that area at that time?

A. Mr. L. A. Nordan.

Q. All right; go ahead, Mr. Stein.

A. He was the vice president of Southern Gas Company. And so, in contacting Mr. Nordan, I inquired of him whether or not we could purchase the gathering system he had in the Carolina-Texas field, and connect the wells which were connected to that gathering system, to our lines.

Q. Well now, did the South Texas Gas Company at that time have a gathering system in the Carolina-Texas field?

A. They had a gathering system connected to some wells that they were taking gas from.

Q. Well, was that gathering system connected to the wells and located in the part of the field where these additional wells that you speak of were?

[fol. 188] A. The South Texas Gas Company's gathering system was in the southern part of the field, and the Southern Gas Company's gathering system was in the central and northern part of the field.

Q. All right; go ahead.

A. Mr. Nordan informed me that he could not readily sell the gathering system in that field, and after we talked it over for some time he thought possibly some arrangement

might be worked out for the Southern to continue to purchase this gas and gather it, and deliver it to the South Texas Gas Company.

Q. What reason did he give you for telling you that the Southern could not sell its gathering system?

A. He said it was a part of the properties which was under mortgage and could not readily be sold.

Q. That is, under the corporate mortgage of the Southern Gas Company, you mean?

A. Yes, that is correct; it was under the corporate mortgage of Southern Gas Company.

Q. All right, go ahead, Mr. Stein.

A. So, after some consideration, we arrived at a figure or an arrangement whereby they would gather and deliver the gas to us.

Q. And is that arrangement set forth in this contract which has been introduced in evidence and marked Defendant's Exhibit No. 7?

[fol. 189] A. It is.

Q. Mr. Stein, you state at that time that Mr. Nordan was the vice president in charge of the affairs of the Southern Gas Company?

A. I did.

Q. And that that was a part of the Moody-Seagraves group through stock ownership of Moody-Seagraves in that company?

A. It was a part of it.

Q. And the Moody-Seagraves group likewise owned a part of the stock of South Texas Gas Company?

A. It did.

Q. Now, were you at that time in any way responsible for the operations or the financial success of Southern Gas Company?

A. I was not.

Q. Was Mr. Nordan in any way responsible for the operations or the financial success of South Texas Gas Company?

A. He was not.

Q. Well, just state how you went about entering into this contract.

A. We discussed the method by which the matter could be arranged and ultimately, after considerable discussion [fol. 190] and after several days delay, arrived at a price of one cent a thousand for gas that they might gather for

us and six cents a thousand gross for such gas as they might purchase and sell to us.

Q. Did that six cents cover both the gas at the well mouth and the delivery to the pipe line of South Texas Gas Company?

A. It did.

Q. Now, did you execute that contract?

A. I did.

Q. At the time you executed it did you, based on your judgment as a business man, feel that that was a good contract for South Texas Gas Company?

A. I certainly did.

Q. Do you still think so?

A. I certainly do.

Q. If Southern Gas Company had been in no way affiliated with the Moody-Seagraves group, in your judgment, would you have entered into the same character of contract with any other independent concern?

A. Under the circumstances existing in the field at that time, with the wells there showing a steady and continued loss in pressure, I thought it was an excellent opportunity to make this sort of an arrangement, particularly so that [fol. 191] it——

The Court: Mr. Witness, I don't believe you understood the question at all. At any rate you are not answering it.

The Witness: Read the question, please.

The Court: Read it.

(Thereupon, the Reporter read the last preceding question.)

A. Under the circumstances, I would.

* * * * * * *

[fol. 192] Q. Mr. Stein, are you acquainted with the transmission line that leads from Jennings Junction to Pescadito?

A. I am.

Q. And are you acquainted with the location and to a general extent with the operation of that line?

A. I am in a general way.

Q. Are you familiar with whether or not any gas was delivered through that line in the past few years which was used in Laredo?

A. It was used in 1929 and 1930 and for many years prior to 1929.

Q. Yes.

A. And part of 1931.

Q. Were you in that territory in 1932?

A. I was there only the last six months.

Q. Since that time what has been the use of that line for the service to Laredo, if you know?

A. Well, it was used in the last two months of 1933.

Q. The last two months of 1933. Do you know whether or not it was filled with gas or otherwise during any additional part of 1933.

A. It was kept filled with gas, except during the time that there was some major repair work done on it.

Q. For what service area was it kept in readiness to serve?

[fol. 193] A. Laredo.

Q. Now, Mr. Stein, are you in charge of the operations of the Laredo distribution system?

A. Yes, I am.

Q. Are you responsible for the operating expenses incurred in connection with that distribution system?

A. I am.

Q. What, in your judgment, as an operating man, has been the character with respect to the amount of those operating expenses so incurred?

A. I have my district down as the lowest of any district in the entire United Gas System per meter—on a meter basis.

Q. Have you been making any efforts to save money?

A. I have indeed. I think I have the record for the lowest expenses.

Q. What have you to say with reference to the maintenance expenses of the Laredo distribution system?

A. It has been kept to a minimum. We would like to spend a little more money on it if we could.

Q. How long have you been operating gas distribution system properties?

A. I have been in charge of the distribution operations completely since 1927 and for a number of years prior to [fol. 194] that time in connection with Dr. Cullinan, who is the manager of the property.

Q. In your judgment, can or can not the maintenance costs of the Laredo distribution system be kept for the

future under economical operations at the level at which such costs have been for 1932 and 1933?

A. They can not without a resultant loss in the efficiency of the system.

* * * * * * *

Q. Now, Mr. Stein, are you familiar with the construction of the residences there in the city of Laredo?

A. To a certain extent, yes.

Q. What type of fuel are those residences, generally speaking, constructed and equipped to use?

A. In the last twenty years practically every residence that has been built has been built with the idea of using natural gas as fuel.

Q. And state whether or not provision has been made in the construction of those residences for the use of any other character of fuel, generally speaking.

* * * * * * *

A. There has been no equipment for using other fuel.

Q. Now, Mr. Stein, is it part of your business to ascertain and know about competitive fuel installations, either [fol. 195] residential, commercial, or industrial, within the city of Laredo?

A. It is.

Q. What is the situation with reference to installations in residences there in Laredo for the use of fuels other than gas?

A. There is a very, very small percentage of installations that use other fuels than gas.

Q. Do you know approximately, at least, how many electric cooking ranges there are installed there in Laredo?

A. There are approximately ten. I know of three.

Q. You know about three. Your customer data shows ten?

A. That is the information we have so far.

Q. And what with respect to electric hot water heaters?

A. I know of only one.

Q. And what with respect to electric space heaters?

A. There are very few.

Q. And how about installations in the—commercial installations to use competitive fuel; do you know about those?

A. I know of three offhand.

Q. How about industrial installations using competitive fuel?

A. A like number.

* * * * * * *

[fol. 196] Q. Now, what about the number of gas consumers in the City of Laredo as compared with the consumers of other character of public utility service?

A. We have more gas meters than the Central Power & Light Company has of electric meters, or of water meters, or the telephone company has telephones.

Q. Now, have you got the figures on that?

A. I have.

Q. Please read them into the record. Have you got them as of the end of 1933?

A. I have them as of January 1, 1934.

Q. Please read them into the record.

A. We have 4775 gas meters. There are 3087 light and power meters, and 4227 water meters.

Mr. Bobbitt: How many is that?

A. 4227. And there are 2769 telephones.

Q. Have you got the same figures as of the end of the year 1933?

A. I have.

Q. Please read those.

A. We had 4790 gas meters.

Q. At the end of 1932?

A. Yes; that is January 1, 1933.

Q. Yes.

[fol. 197] A. 3162 light and power meters; 4361 water meters; and 2742 telephones.

Q. And you say there are more gas meters and gas customers in town than there are customers of any other public utility service?

A. I do.

* * * * * * *

Q. Now, Mr. Stein, based on your past knowledge and experience in the gas business and as a practical operator of gas property and your knowledge of conditions in Laredo, what, in your judgment, would be the effect on con-

sumption and revenues of substituting for the presently existing residential rate the rate of fifty-five cents prescribed by the Commission?

A. In my judgment there would be a very slight increase in consumption, for the reason that in Laredo we have all homes equipped with appliances to use gas and gas only for cooking, space heating and hot water heating, and, being so completely equipped as the homes down there are, they would have no occasion to use additional gas by virtue of a lower rate.

Q. And how long, generally speaking, has the situation prevailed that you have described, namely, full equipment [fol. 198] of practically all residences for all types of use of gas?

A. For quite a number of years.

Q. For a number of years. Now, if you substitute the fifty-five cent rate for the seventy-five cent rate what about the increase, if any, in number of consumers?

A. At the present time we are serving nearly every one in Laredo who can afford to use gas, and by decreasing the rate there would be little incentive to add—little incentive to prospective consumers that may be there to get them on the line. There would be a class, possibly, that could not afford to use gas now that even at a lower rate would not be able to use it then.

Q. Now, is it your experience and observation in the gas business that there is always a certain number of customers in every town that are normally described as unprofitable consumers?

A. We have on our lines at the present time quite a number of customers whom we class as unprofitable customers, and by lowering the rate we might add a few more of those unprofitable customers.

Q. Well, you use some reasonable judgment as to where you are going to stop, don't you?

[fol. 199] A. Yes. The additional investment that might be necessary to add more customers would probably prohibit the making of the investment because of the small revenue to be received from such customers.

Q. Well, now, if perchance the reduction of the present rate from seventy-five cents to fifty-five cents would result in your adding to the line or getting signed up on service contracts some of those customers that you classify as not

profitable, what, in your judgment, as an over-all proposition would the having of those customers have on the net revenues of the Company?

A. It would have the effect of decreasing the net revenues, because it would add the burden on those who would be profitable.

Q. It takes a substantial investment or some investment to serve each additional customer?

A. It does.

* * * * * * * *

M. A. Abernathy, a witness for the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name?

A. M. A. Abernathy.

Q. Mr. Abernathy, where did you go to college?

[fol. 200] A. Texas A & M College.

Q. What degree did you take?

A. B. S. in Civil Engineering.

Q. What business are you now engaged in?

A. In the gas business.

Q. How long have you been engaged in that business?

A. Directly, some ten years or more, and for several years prior to that I was some time, indirectly——

Q. What do you mean, some time, indirectly, Mr. Abernathy?

A. Well, I was working for several years prior to that, I was with a company which was in both the oil and the gas business.

Q. What company was that?

A. The Magnolia Petroleum Company.

Q. By whom are you now employed.

A. United Gas Public Service Company.

Q. In what capacity?

A. Superintendent of transportation or transmission department.

Q. Outline generally your duties as superintendent of transmission department, Mr. Abernathy.

A. My duties consist of the supervision of the operations and maintenance of the pipe lines, and duties incidental to that, from the wells to the points of delivery at the city gate or to consumers.

[fol. 201] Q. * * * And are the transmission lines in the Laredo area under your general supervision?

A. They are.

Q. And are you acquainted with the location and the layout of those transmission lines that take gas toward Laredo?

A. I am.

Q. Are you acquainted with the line that is customarily referred to as the Jennings-Pescadito line?

A. I am.

Q. Please outline in your own language, Mr. Abernathy, the use of that line for the service of Laredo, over the past several years.

A. Well, the line was used continuously for the service of Laredo for a number of years, up until 1931, I believe it was, and for a period there the use was rather intermittent, and beginning, I think, in September 1932, up until June, 1933, the line was kept in service, and ready for service to Laredo. At that time, some reconditioning work was done on it and the line was placed back in service, I believe, in November, 1933, and has been serving Laredo since that time.

Q. What, in your judgment, based on your knowledge of the situation down there, are at present the main sources of gas supply for Laredo—what fields?

[fol. 202] A. Well, I think the area in which the Jennings field is located is probably the best source of future supply for Laredo.

Q. The best future source of supply?

A. Yes.

Q. Where is the larger part of the gas Laredo is now getting coming from, at the present time?

A. It is coming from the Carolina-Texas field.

Q. Well then, why do you say the Jennings field is probably the best future source of supply?

A. Well, the gas in the Carolina-Texas field, the amount is declining, and the field as a whole is declining and apparently so far as we can see at this time, it will continue to decline and there seems to be more general producing

areas in the territory of the Jennings field area than in Carolina-Texas.

• • • • • • •

Q. Do you know about the sources of supply for delivery to your transmission lines, not only generally over the system, but in the Laredo area?

A. Yes, I do.

• • • • • • •

Q. And your answer was based on pressure and delivery conditions in the Carolina-Texas field?

A. Yes.

[fol. 203] Q. And with respect to the Jennings field, so far as that field and its various subdivisions have been developed, is your answer likewise based on pressure and delivery conditions of the various sands there?

A. Yes.

Q. Mr. Abernathy, you say that the Jennings-Pescadito line was out of service in recent periods; do you know why?

A. We were doing some work on the line, reconditioning some parts of it.

Q. Stated in your own language, what are the soil conditions along that line?

A. Well, the soil conditions are varied; there is a variance in the conditions along the line in different spots.

Q. State what that variance consists of.

A. Well, they are what we term as hot spots along the line, or spots in which the soil is more corrosive than it is in other places.

Q. By hot spots do you mean the soil is corrosive all along the line?

A. I say it is more corrosive in some places than it is in other parts of the line. There may be a little spot where it is corrosive, and the adjoining soil on either side not corrosive.

[fol. 204] Q. Where, generally speaking, are those hot spot conditions found?

A. Generally they are found in what we call salt flat places.

Q. In the language of a layman, what brings about this hot spot condition?

A. I think it is an alkali or salt condition in the soil.

A. Alone or combined with any other element?

A. Well, combined with the soil, of course.

Q. Now, your testimony is that that hot spot condition does not prevail all along the line?

A. No.

Q. And where you have a hot spot condition of that sort, what effect does that condition of the soil have on the pipe laid in those hot spots?

A. It corrodes—depending on the nature of the hot spot it causes more or less serious corrosion. The pipe corrodes more rapidly in those spots than in the good soil.

Q. What is necessary from time to time where you have a line of that sort in order to keep the same in a high state of service and efficiency?

A. It is necessary to recondition those pipe- in those hot spots.

[fol. 205] Q. What with respect to the rest of the pipe?

A. Well, not anything necessary.

Q. Where a line has one or two large leaks in it is it economical to operate it?

A. No, sir; depending on the size of the leaks, of course, it is not; it would reach a point where it would not be economical.

Q. Are you acquainted, Mr. Abernathy, with the contract between Southern Gas Company and South Texas Gas Company dated November 1, 1929, which contract has been introduced in evidence and marked Defendant's Exhibit 7?

A. I am.

Q. Are you acquainted with the conditions prevailing in the Carolina-Tex field in respect to the situation of the South Texas Gas Company and the Southern Gas Company prior to and at the time that contract was made?

A. Generally, yes.

Q. Will you please outline what are the conditions to which you refer?

A. At the time the contract was made the South Texas Gas Company's supply was declining, and they needed an additional supply of gas in the Carolina-Tex field.

Q. You mean the gas in the wells to which they were connected?

[fol. 206] A. It was declining, and they needed an addi-

tional supply of gas in that field at that time. The Southern Gas Company had an additional supply of gas, and the gathering system connected to the wells through which this supply was obtained.

Q. Do you know what was then done by these two companies?

A. They entered into a contract whereby the South Texas agreed to purchase gas from the Southern at a price of five cents at the well mouth, and likewise the Southern agreed to rent its gathering system to the South Texas, charging therefor at one cent per M. C. F. for all the gas transported through the gathering system. The Southern likewise agreed to attempt to purchase additional gas and to connect additional wells in the field at their expense and to maintain the gathering system.

Q. Now, do you know what, if anything, was done with the gathering system of the Southern Gas Company in the Carolina-Texas field?

A. Well, the system they had at the time of the contract, it was necessary to rearrange it to fit in with and tie into the lines of the South Texas Gas Company.

Q. Prior to the time this contract was entered into was the gathering system so located and arranged and connected that it could tie to these producing wells and serve [fol. 207] gas to the Laredo line of the South Texas Gas Company?

A. It was not.

Q. And do you know whether that gathering system was either entirely, or in large part, relaid and re-arranged?

A. It was.

Q. At whose expense?

A. The Southern Gas Company.

Q. And what money was the South Texas out of pocket by reason of that arrangement?

A. At that time?

Q. Yes.

A. None.

Q. What company made an additional investment by reason of that arrangement?

A. The Southern Gas Company.

Q. Now, has that contract remained in effect since that time?

A. Yes.

Q. And you have had a good deal of experience, have you not, Mr. Abernathy, in making contracts to secure a supply of gas to a transmission line?

A. Yes.

Q. And from your knowledge of all the circumstances [fol. 208] and facts surrounding the making of this contract at the time it was made, what in your opinion and judgment as a practical operating man—will you state your judgment as a practical operating man as to whether or not that contract, from the point of view of the Southern Gas Company, was a provident or improvident contract?

A. From the standpoint of which Company?

Q. The South Texas Gas Company.

A. In my opinion it was a good contract for the South Texas Gas Company.

Q. Can you give some of the main reasons on which you base that opinion?

A. Well, at that time the Carolina-Tex field as a whole was declining. The present 2200-foot sand had not been discovered. There were three producing sands at that time, I believe, and they were all declining. The South Texas Gas Company was faced with the prospect of spending a considerable sum of money in building a gathering system in the face of the declining field. By the making of this contract they did not have to spend any sum of money, and therefore had no risk in any cash they might have to put out. In case the field declined more rapidly, [fol. 209] or quit producing, they had no investment in the field which they might stand to lose.

Q. And their obligation was to pay this gathering charge in the amount that they took gas?

A. Yes.

* * * * * * *

Q. Have you made any computations to show the return to the Southern Gas Company under this contract of November 1, 1929, with the South Texas Gas Company, which has been introduced in evidence here and marked as Exhibit 7?

A. I have.

Q. Please let me have as many copies as you have.

A. All right.

Mr. Coates: We ask that this instrument be marked for identification as Defendant's Exhibit Number 8, and we offer it in evidence, and will number the pages of the exhibit now.

(Thereupon, the instrument above referred to was offered in evidence by the defendant, and marked Defendant's Exhibit No. 8. A copy of designated page thereof appears on the next following pages.)

[fol. 210] The following are pages 2129, 2132, 2133, and 2136 from S. F. Vol. IV.

[fol. 211] DEFENDANT'S EXHIBIT No. 8

Page 1

Southern Gas Company

Carolina-Texas Field

Gathering System Investment

Estimated Investment as of November 1, 1929	$25,597.00
Rearrangement Expense November and December, 1929	7,375.00
Total Investment during year 1930	$32,972.00
Additional Expense during 1930 and 1931	8,741.00
Total Expenditures by Southern Gas Company	41,713.00
Less Property Retirements	4,420.00
Net Investment 1931-1932-1933	$37,293.00

NOTE.—The additional expense of $8,741.00 was incurred during the latter part of 1930 and the early part of 1931, and for the purpose of this report — is assumed that the effective date of all these additions was January 1, 1931. Similarly, the property retirements of $4,420.00 (although these lines have not actually been removed) could have been made in 1930 and 1931 and the effective date of these detirements is also taken as January 1, 1931.

DEFENDANT'S EXHIBIT No. 8—Continued

[fol. 212] Page 4

Southern Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated investment of the Southern Gas Company in the Carolina-Texas Field gathering system. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

Investment—Years 1932-1933	$37,293.00
Operating Expenses:	
1. Return @ 7%	2,610.51
2. Reserve for depreciation @ 3%	1,118.79
3. Operation @ 10%	3,729.30
Total Operating Expenses	7,458.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#—14.4#)	Expense	Cost per M. C. F.
1932	601,257	$7,458.60	$.0124
1933	503,238	7,458.60	.0148
Total 1932-1933	1,104,495	$14,917.30	$.0135

3-7-34.

DEFENDANT'S EXHIBIT No. 8—Continued

[fol. 213] Page 5

South Texas Gas Company

Gathering Lines—Carolina-Texas Field—Reproduction Cost New, Less Depreciation, Less Retirements

Estimated Reproduction Cost:

1. Cost of System as it existed on November 1, 1929	$28,646.00
2. Cost of additions made to System after November 1, 1929	8,629.00
Total Cost	$37,275.00
Less Retirements	4,420.00
	$32,855.00
Depreciated value based on 84% condition	$27,598.00

NOTE.—The condition of the gathering system is assumed to be the same as that of the pipe line from Pescadito Junction to the Carolina-Texas Field, namely, 84%.

The property retirements listed above consist of 1369 feet of 4" pipe and 4 meter stations which could have been removed during 1930 and 1931.

[fol. 214] Page 8

South Texas Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated reproduction cost, less depreciation, of the Southern Gas Company's gathering system in the Carolina-Texas Field. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

DEFENDANT'S EXHIBIT No. 8—Continued

Investment—Years 1932-1933	$27,598.00
Operating Expenses:	
1. Return @ 7%	$1,931.86
2. Reserve for depreciation @ 3%	827.94
3. Operation @ 10%	2,759.80
Total Operating Expenses	$5,519.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#—14.4#)	Expense	Cost per M. C. F.
1932	601,257	$5,519.60	$.0092
1933	503,238	5,519.60	.0110
Total 1932-1933	1,104,495	$11,039.20	$.0100

3-7-34.

[fol. 215] * * * * * * *

Q. Please state what is shown on page 1 of Defendant's Exhibit No. 8?

A. Page 1 shows the estimated investment of the Southern Gas Company immediately prior to the contract of November 1, 1929, the estimated rearrangement expense at that time to connect its lines to the South Texas Gas Company, the additional expense it has incurred since that time in connecting additional wells, and the property which could be retired at this time, that is, which is not being used at this time in transporting gas, and the total net investment that the Southern Gas Company has made for the account of this contract.

Q. Now, the estimated investment as of November 1, 1929, what amount of dollars is that?

A. That is $25,597.00.

Q. And is that by the application of unit prices to the materials?

A. Yes.

Q. And the Rearrangement Expenses November and December, 1929?

A. $7,375.00.

Q. And is that an appraisal, or are those the actual figures?

[fol. 216] A. That is an appraisal—estimate.

Q. The additional estimate during 1930 and 1931?

A. $8,741.00.

Q. Is that likwise by the application of unit prices to inventory quantities?

A. Yes.

Q. And the property retirements; has that property been actually retired?

A. No, sir; it has not.

Q. What does it consist of?

A. It consists of the well lines to certain wells and the meter stations at those wells.

Q. Are those wells now producing gas?

A. They are not.

Q. Are they what is commonly termed dead wells?

A. They are, yes.

Q. And the net investment as shown on page 1 is what?

A. $37,293.00.

Q. And the note shown on the bottom of that page is in further explanation of the figures stated above?

A. Yes.

* * * * * * *

Q. And have you had a good deal of experience in putting in, operating and retiring gathering lines?

[fol. 217] A. Yes, I have had considerable.

Q. What measures the life in place of a gathering line, Mr. Abernathy?

A. The life of the well, the operating conditions of the well and the amount of gas to be taken from the well.

Q. And are you familiar in a general way with the normal life of these wells located in the Carolina-Texas field?

A. Generally speaking, yes.

Q. And what, in your judgment, is a fair and reasonable annual accrual for depreciation on gathering lines serving wells in the Carolina-Texas field?

A. Well, in my opinion the figure I have used here of ten per cent is a reasonable figure.

Q. Does that give credit for any salvage that you might get from the removal of gathering lines?

A. Yes, that takes that into account.

Q. And do you consider all salvage as a credit?

A. Yes.

* * * * * * *

Q. Turn to page 4, and explain the computation you have there, Mr. Abernathy.

A. The computation on page 4 is a computation using the same investment figure and using the amounts for return, depreciation and operating expense as suggested in the [fol. 218] order of the Railroad Commission, following the Laredo hearing.

Q. Do you mean the order of the Railroad Commission, dated June 13, 1933?

A. Yes.

Q. And entered in Gas Utility Dockets 49 and 63?

A. Yes.

Q. And have you taken these figures directly from that order?

A. Yes.

Q. And what, under that computation contained in the order of the Railroad Commission to which you have just referred—what gathering charge would be necessary for the years 1932 and 1933, and the average of those two years?

A. For the year 1932, the charge would be 1.24 cents; for the year 1933 it would be 1.48 cents, and the average for the two years would be 1.35 cents.

* * * * * * *

Q. Turn to page 5; what appears on page 5 of Defendant's Exhibit Number 8?

* * * * * * *

A. Page 5 shows the reproduction or the estimated reproduction cost new of the facilities installed by the Southern Gas Company, for gathering this gas, less the retirements and depreciated to the present estimated condition.

[fol. 219] Q. And what item on that page represents the estimated reproduction cost new, less depreciation, of the gathering lines in the Carolina Texas field, used to carry out this gathering line contract?

A. The item of $27,598.00.

Q. Well, isn't that after retirements?

A. Yes.

Q. What is the first figure?

* * * * * * *

A. The first figure is the estimated reproduction cost of the system, after it was reconstructed after the contract of November, 1929, of $28,646.00.

Q. At prices of labor and material current for what period?

A. Well, I am not certain on that point. That estimate was prepared by the engineering department.

Q. All right; what is the next item.

A. The next item is the estimated cost for the additional facilities, which have been constructed since the date of November 1, 1929, of $8,629.00.

Q. Now, what is represented by the description and the figure, less retirements?

A. That is the estimated reproduction cost of the system, less the property which could be retired at this time.

Q. And is that the property to which you have referred as being connected to dead wells?

[fol. 220] A. Yes.

Q. And what is the total reproduction cost new before deducting accrued depreciation?

A. $32,855.00.

Q. And after deducting accrued depreciation?

A. $27,598.00.

Q. And the note on the bottom of the page is in further explanation of the figures above shown?

A. Yes.

* * * * * * *

Q. And under the heading operating expenses, what per cent do you use for return?

A. Seven per cent.

Q. And what for reserve for depreciation?

A. Ten per cent.

Q. And is the gathering line maintenance and supervision and general expense the same figure shown on page 2 of Defendant's Exhibit 8?

A. Yes.

Q. And derived from the same source?

A. Yes.

Q. And what unit per M. C. F. of gas gathered for the year 1932 do you show as necessary for a seven per cent return and ten per cent reserve accrual, after payment of [fol. 221] gathering line maintenance and supervision and general expense?

A. For the year 1932?
Q. Yes.
A. .85 cent.
Q. For the year 1933?
A. 1.02 cents.
Q. And the average for the two years?
A. .93 cents.
Q. That is 93/100 of one cent?
A. Yes, .93 cent.

* * * * * * *

Q. What is shown on page 8?
A. Page 8 is a computation of the gathering charge, based on the reproduction cost new less depreciation and retirements, computed on the basis suggested in the Railroad Commission's order which I mentioned while ago.
Q. And what amount per M. C. F. of gas gathered is necessary to show a return of seven per cent and a reserve for depreciation of three per cent, after operating costs of ten per cent, as reflected by the Commission's order?
A. .92 cent.
Q. For 1933, what was it?
A. 1.1 cents.
[fol. 222] Q. And the average of the two years?
A. One cent.
Q. Exactly one cent?
A. Exactly.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. * * * Now, you testified about the Pescadito Junction and Jennings Junction transmission line, about these hot spots along that line, this morning. I don't know that I understood just how many of those hot spots along that line, if you know?
A. Well, I don't know the exact number.

* * * * * * *

Q. You haven't been all along the line—you just saw the end of it at Pescadito and you saw the other end of it?
A. Yes.

Q. That is the extent of your inspection?

A. I said I had been on the line. I haven't inspected it for hot spots.

Q. What you testified about the hot spots along the line and this condition of the pipe is what somebody told you?

A. Well, I know the condition of the pipe, and the work that it has been necessary to do on the line from inspection reports.

[fol. 223] Q. But you have testified that you made no personal inspection of it?

A. That is correct.

Q. There being hot spots along that line, Mr. Abernathy, and you not having made any personal inspection of that line, you don't know of your own knowledge anything about the capacity of that line to transport gas at this time, do you, of your own knowledge?

A. Yes; I know something about it.

* * * * * * *

Q. Do you know what pressure that line could stand—what gas pressure, of your own knowledge?

A. You mean at what safe working pressure the line could be operated?

Q. Yes; whether it could be operated as a practical proposition—do you know what pressure?

A. At what point?

Q. At any point. It would not be any stronger than the weakest point in the line.

A. Yes; I know approximately, yes, what would be a safe pressure on the line.

Q. What is a safe pressure on that line approximately?

A. I think you could work the line up to possibly 200 to 250 pounds.

* * * * * * *

[fol. 224] Q. What do you mean by working it up to that?

A. I mean it could be operated at those general pressures. It would possibly have some leaks in it that would have to be repaired.

Q. It its present condition?

A. I say there possibly would be some leaks occur that would have to be repaired—hot spots.

Q. You don't know the extent of the leaks, or how many?
A. No; that would be impossible.

• • • • • • •

A. D. GREENE, a witness for the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. A. D. Greene.
Q. By whom are you now employed?
A. By the United Gas System.
Q. In what capacity?
A. As Chief Engineer.
Q. Are you Chief Engineer for the entire system?
A. Yes.
Q. Have you ever testified before in any court, Mr. Greene?
A. Not before a court, no sir.
Q. How many times have you ever testified before a Commission?
[fol. 225] A. One time.
Q. What, generally speaking, are your duties, as Chief Engineer of the United Gas System, Mr. Greene?
A. I am in charge of all the engineering work and the construction.
Q. Of the engineering work and the construction?
A. Yes, sir.
Q. State generally what character of engineering work you supervise?
A. Well, we have an estimating department, and a corrosion department; a drafting department, valuation department, distribution department, transmission department and production engineering department.
Q. To go back a minute; are you a graduate of any engineering school; Mr. Greene?
A. Yes, of the Ohio State University.
Q. With what degree?
A. Bachelor of Civil Engineering.

Q. And how long have you been engaged in the practice of your profession as an engineer?

A. Since 1919.

Q. And how long have you been connected with the character of engineering in which you are now engaged?

A. Since 1920 I have been in the oil and gas engineering work.

[fol. 226] Q. And have you been continuously engaged in doing engineering work, connected with oil and gas, since 1920?

A. Yes.

Q. You said that one of your duties and the duties of the engineering department which you supervised, is an estimating department; what do you mean by an estimating department?

A. We prepare the annual construction budget and make expenditure requisitions against the budget.

Q. During the time you have been with the United Gas System, has the United Gas System done any construction work of gas properties?

A. Yes, some very substantial quantities.

Q. What character of gas properties?

A. We have built transmission lines, gathering lines and distribution systems; gasoline plants and compressor stations.

Q. And how long have you been with the United Gas System?

A. Since the latter part of 1930.

Q. During the time you have been connected with the United Gas System, what amount of dollars, approximately, has been invested in the construction of these properties, which you have supervised?

A. I would say approximately $30,000,000.00 total.

Q. And has all that construction been carried on under your supervision?

[fol. 227] A. Yes.

Q. Now, Mr. Greene, you mentioned that the estimating department prepared the construction budget. Have you got anything to do with the preparation of that construction budget?

A. Yes, I am responsible for the preparation of the annual construction budget.

Q. What is the construction budget?

A. It contains individual budget items covering the pro-

posed construction for the ensuing year, following its preparation. It is finished about January first of each year.

Q. Now, does that contain the estimated cost of construction for each job anticipated for the ensuing year?

A. Yes, it does.

Q. Is that simply your guess about it?

A. No, sir; that is an estimate.

Q. What do you mean by an estimate?

A. I mean that the projects are carefully gone into and studied and an accurate estimate is prepared on each project.

Q. And what is the purpose of the construction budget?

A. To authorize, or rather, to make available the funds for the construction.

Q. Well, how does the construction budget effect that purpose?

A. It sets forth the quantity of money that is to be required for capital investment during the year.

[fol. 228] Q. And is the money required for capital investment during the year based on that construction budget?

A. It is, yes.

Q. Now, you say that is prepared at or before the first of the year, for the ensuing year?

A. Yes.

Q. During the year normally are the jobs set forth in the construction budget actually done?

A. Yes, usually; of course occasionally some job is omitted.

Q. And when the time comes to do a job, what do you and the engineering department do, prior to the time the construction work is begun?

A. We prepare an expenditure requisition, giving a detailed estimate of the work which is proposed.

Q. And what is contained in an expenditure requisition, Mr. Greene?

A. It is a detailed estimate, with a bill of material, and each item of the bill of material is priced out.

Q. And what does it purport to show?

A. The cost of the project.

Q. Now, as these jobs are in progress, what do you do, Mr. Greene?

A. Well, of course we very carefully follow the con-

struction work from its inception, and we prepare progress [fol. 229] reports daily and weekly on these jobs, and generally supervision of the construction is given.

Q. Now, state whether or not there is comprised in what you do in anticipation of the jobs, what is normally referred to as plans and specifications, and a bill of material?

A. We prepare the plans and specifications and a bill of material.

Q. State whether or not you furnish the engineering department's engineering supervision on those jobs?

A. We furnish the engineering supervision for those jobs.

Q. What does this report, these progress reports you have mentioned; what do they show?

A. They show the progress of the work and how much is completed as of a certain date.

Q. Do they show the costs thus far incurred during the doing of the job?

A. Yes, they usually show the labor costs and the material that has been received on the job.

Q. As those progress reports are received, what do you do with them?

A. I assemble them in a report which is mailed to the executives of the company

Q. And do you check them against any items?

A. Yes, we check them very carefully each week.

[fol. 230] Q. Against what?

A. Against the estimate.

Q. And when the job is finally completed, what do you do?

A. Prepare a cost analysis.

Q. What does that cost analysis reflect?

A. It reflects both the estimated cost and the actual cost that was incurred in the construction.

Q. And is that prepared by you or under your supervision?

A. Yes, it is.

Q. And what comparison do you make between the estimated cost and the cost analysis of the completed job?

A. We make a comparison on each job.

Q. Now, has this same character of procedure been going on ever since you were with the company?

A. Yes.

Q. And have you estimated the cost of and received

progress reports on and checked the actual against the estimated on approximately $30,000,000.00 of work?

A. We have, yes.

Q. Now, who is personally responsible for the accuracy of these construction cost estimates, Mr. Greene?

A. I am personally responsible for their accuracy.

Q. Don't you put in those estimates a sufficient amount, so that you are sure not to go above them?

[fol. 231] A. No, sir; I try to put in the correct amount.

Q. Why don't you put in an amount for safety there?

A. Well, in case a project is estimated too high, it might result in the project never being developed, for the reason that it would not show a sufficient return.

Q. And what other reason?

A. Well, because I would not want an estimate, when checked out with the actual costs, to be incorrect.

Q. And what, with reference to the provision of the money?

A. The budget is prepared on that basis, and covers, or our estimates govern the amount of money provided for.

Q. Suppose you over-estimated each one of these jobs; that is, your estimate is in excess of what the actual cost is. What has happened then?

A. Well, we would have too much money for the jobs.

Q. Suppose you under-estimate the cost of any particular job?

A. In that case we would have to get a budget amendment to get sufficient money to complete the work.

Q. Now, Mr. Green, based on this experience with the United Gas System, and your prior experience, do you feel that you can estimate with a reasonable degree of accuracy, the costs of a gas property?

A. Yes, I do.

Q. What makes you think so?

[fol. 232] A. From comparison of the estimated costs with the actual costs on $30,000,000.00 worth of work.

Q. Now, when the company came to value its property serving Laredo, did the company's predecessor in title have a complete and up to date inventory of that property?

A. No, sir, they did not.

Q. Was such an inventory made?

A. Yes, it was made.

Q. By whom?

A. By the engineering department, under my supervision.

Q. And of what did that inventory consist?

A. It consisted of an accurate count of all of the items of construction equipment located on the property, and the measurement of all the pipe lines, and a very careful inspection of the percent condition, and that about covers it.

Q. Now, the inventory of the property; what is that, in substance, Mr. Greene?

A. That is a count of the material that comprises a property.

* * * * * * * *

Q. Did you furnish a copy of the inventory to anyone?

A. Yes, we furnished a copy of the inventory to the engineers for the City of Laredo.

[fol. 233] Q. Well now, and what next did you do, in preparation for the valuation of this property?

A. We secured prices on the materials, and computed the unit costs of installation.

Q. Prior to that time, did you make any study of local construction conditions?

A. Yes, we went into the local construction conditions, also.

Q. And from what source did you secure the prices of materials?

A. From consulting our purchase orders of materials of a similar kind, and from quotations from manufacturers.

Q. And as of what date was that inventory completed?

A. The valuation was completed about July 1, 1932, and the inventory was completed some time prior to that.

Q. And have you accurate figures showing the net additions and retirements to property since that date?

A. Yes.

Q. Having obtained material costs from purchase orders, manufacturers' quotations and manufacturers' catalogs, what next did you do, Mr. Greene?

A. We made an estimate of the installation costs, and labor for installing the items.

Q. And in what form did you place—First, what are the unit costs to which you have referred. What do they consist of?

[fol. 234] A. Unit costs, as I think of them, are the costs of a lineal foot of pipe, for example, installed.

Q. And what two items make up those unit costs?

A. The two main items are the labor and material.

Q. Then, having an inventory and having made a study of the construction conditions, and having obtained the costs of material and the costs of installation, were you able to appraise the cost to reproduce the properties serving the City of Laredo?

A. Yes.

Q. And by what term do you generally refer to the costs consisting of the application of the unit costs to the inventoried quantities?

A. That is direct structural costs.

Q. Now, are there any other costs incurred in connection with building a property of this character?

A. Yes, there are additional costs.

Q. By what term do you generally refer to those costs?

A. General construction expenditures.

Q. And of what do those consist?

A. They consist of preliminary and organization expense, legal and administrative expense, taxes during construction, interest during construction, engineering and supervision.

[fol. 235] Q. And why don't you figure those costs on the basis of each foot of pipe?

A. Because those costs, apply more to the property as a whole, and they are not capable of being identified with any particular unit of pipe or construction.

Q. Now, in laying a pipe line, say a transmission line, Mr. Greene, what are the principal operations necessary which make direct construction costs?

A. You first have a preliminary survey and then the right of way is purchased and the right of way is cleared and graded and grubbed, and the pipe is hauled and strung.

Q. And how do you get that pipe there?

A. It is hauled and strung there; it is purchased, and hauled and strung. Then you have a welding and jointing cost, or dresser coupling, and ditching costs and laying costs and backfilling and cleanup and repairs to fences and so forth.

Q. Now, do your unit costs on transmission lines cover the material and installation costs incurred in each of those operations?

A. Yes.

Q. With the exception of clearing the right of way and so forth, do you have much the same costs in connection with laying distribution system mains?

A. You have in general the same classifications, yes.

[fol. 236] Q. And can you likewise give an example of the operations which enter into the direct construction costs, say, in installing a meter—a residential meter for example?

A. Yes, the meter is of course purchased and delivered to some central warehouse or stores room, and it is tested and painted and stenciled and taken to the residence at which it is to be installed, and pipe is cut and fit and the meter is installed.

Q. Mr. Greene, is there anything unusual or common only to appraisals of this character in estimating construction costs and making construction cost estimates in advance of the actual construction?

A. No sir, that is customary.

Q. Is it customary only in construction by operating companies?

A. I think it is customory for anyone to make an estimate before construction.

Q. How about contractors?

A. They always make an estimate before construction; or that is, they should always.

Q. How about contractors who are bidding on work?

A. They have estimated the amount of their bid.

Q. And what is the basis of their bid.

A. The costs; the estimated costs.

Q. Which have been estimated in advance of the time the work is actually done?

[fol. 237] A. Yes.

Q. Now, Mr. Greene, I believe you stated that in connection with making an appraisal of this property, you did certain work in connection with ascertaining its present percent condition?

A. Yes, we did.

Q. Will you outline the character of work done for that purpose?

A. In making the inventory of the city distribution system, approximately 6,000 holes were dug down to the pipe for the purpose of counting the fittings at those points and determining the condition of the pipe at those places, and after that, approximately 300 additional holes were dug on the transmission system at points previously . . .

Q. Transmission or distribution?

A. On the distribution system, at points previously designated on the map. On the transmission system, we inspected the pipe at every mile post, and also made some other inspections in places where connections were on the lines.

Q. Now, were the results of those inspections noted?

A. Yes, sir, they were noted.

Q. Both in the inventory—in the inspections made during the inventorying of the property, and these special inspections to which you referred?

[fol. 238] A. Yes, sir.

Q. And did you yourself likewise inspect this property?

A. Yes, sir.

Q. And did you analyze and study the inspection reports with respect to the condition in which the property was found?

A. Yes, sir, I did.

Q. Now, what with respect to the condition of pipes, say, laid under pavement—what was done in connection with ascertaining the condition of that pipe?

A. At every point where a line tied into a pipe that was under paving we were able to make an inspection, and at those points, in a great many places, we tunneled under the paving to find the condition of the pipe; the pipe was also inspected at some points through manholes.

Q. In other words, you did not cut any of the paving——

A. No, sir.

Q. —but you did tunnel under it?

A. Yes, sir.

Q. And inspected the condition of the pipe at the point where it went under the pavement?

A. Yes, sir.

Q. And likewise inspected the property where you could see it in manholes?

A. That is right.

[fol. 239] Q. And what with respect to the property not under ground but above ground, which you could see?

A. We inspected all of the property above ground.

Q. Mr. Greene, have you prepared in the form of an exhibit for introduction in this case an inventory and appraisal of the gas gathering, transmission, and distribution property and parts thereof used and useful to serve Laredo?

A. I have, yes, sir.
Q. Have you a copy of that instrument?
A. Yes, sir.

Mr. Coates: We ask that this instrument be marked as Defendant's Exhibit 9, for identification, and we offer it in evidence.

(Thereupon the instrument above referred to was marked Defendant's Exhibit No. 9.)

Q. Mr. Greene, as of what date does the inventory contained in Defendant's Exhibit 9 show the items of property?
A. As of the thirty-first of September, 1932.

The Court: You mean August.
The Witness: August, yes, sir.

* * * * * * *

Q. Now, what three main classifications of property are inventoried and appraised in this exhibit, Mr. Greene?
[fol. 240] A. The gathering system, the transmission system, and the distribution system.
Q. And in what order do those main classifications of property appear in the exhibit—which comes first?
A. In the exhibit the distribution system comes first, the transmission system is next, and the gathering system is last.

* * * * * * *

[fol. 241] The following are pages 2141, 2143, 2264 and 2393 from S. F. Vol. IV.

[fol. 242]

DEFENDANT'S EXHIBIT 9

United Gas Public Service Company

Property for Service Within the City of Laredo, Texas

As of 8-31-32

	Before Allocation		Allocated Portion	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Gathering System Property:				
307 Rights of Way	$37	$37	$26	$26
310 Field Regulating & Measuring Station Structures	156	124	111	88
311 Other Gathering System Structures	926	689	660	491
313 Field Lines	15,200	12,616	10,836	8,994
314 Field Regulating & Measuring Station Equipment	1,737	1,440	1,238	1,027
315 Other Gathering System Equipment	1,075	853	766	594
Total Gathering System Property	$19,131	$15,739	$13,637	$11,220
Transmission System Property:				
316 Land	4,350	4,350	3,101	3,101
318 Rights of Way	12,207	12,207	8,702	8,702
320 Transmission Regulating & Measuring Station Structures	2,571	2,486	1,833	1,772
321 Other Transmission System Structures	17,359	14,177	12,375	10,107
323 Transmission System Regulating & Measuring Station Equipment	13,252	12,326	9,447	8,787
324 Transmission Line Equipment	568,097	473,662	404,996	337,674
325 Other Transmission System Equipment	3,736	2,543	2,663	1,813
353 Communication Equipment	24,825	23,583	17,698	16,812
Total Transmission System Property	$646,397	$545,334	$460,815	$388,768

DEFENDANT'S EXHIBIT 9—Continued

	Before Allocation		Allocated Portion	
Distribution System Property:	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
326 Land	$350	$350	$350	$350
329 District Regulator & Measuring Station Structures	688	612	688	612
330 Other Distribution System Structures	1,069	946	1,069	946
332 Measuring & Regulating Equipment	2,864	2,407	2,864	2,407
333 Distribution Line Equipment—Intermediate	85,588	73,627	65,714	56,531
—Low Pressure	290,822	245,156	290,822	245,156
334 Service Line Equipment	91,618	77,876	91,618	77,876
335-336 Meters and Meter Installations	67,250	57,162	67,250	57,162
337 Service Regulators	624	561	624	561
338 Other Distribution System Equipment	28,040	22,261	28,040	22,261
Total Distribution System Property	$568,913	$480,958	$549,039	$463,862
*Total Direct Structural Costs Including Land and Rights of Way	1,234,441	1,042,031	1,023,491	863,850
**Total Direct Structural Costs Excluding Land and Rights of Way	1,217,497	1,025,087	1,011,312	851,671
General Construction Expenditures:				
*Preliminary & Organization Expense	43,000	43,000	35,651	35,651
*Engineering & Supervision Expense	72,094	60,855	59,773	50,454
*Administrative & Legal Expense	48,661	41,075	40,345	34,055
Taxes During Construction	6,784	6,784	5,948	5,948
Interest During Construction	54,888	46,331	45,508	38,413
Total General Construction Expenditures	$225,427	$198,045	$187,225	$164,521
Land and Rights of Way Plus 10%	18,638	18,638	13,397	13,397
Total—Including General Construction Expenditures	$1,461,562	$1,241,770	$1,211,934	$1,029,589
Materials & Supplies in Stock—Gathering	421	421	300	300
—Transmission	3,751	3,751	2,674	2,674
—Distribution	17,732	17,732	17,116	17,116
Sub-Total	$1,483,466	$1,263,674	$1,232,024	$1,049,679
Cash Working Capital	.....	.....	21,500	21,500
Total Valuation (Exclusive of Going Concern Value)	.....	.....	$1,253,524	$1,071,179

[fol. 243] Defendant's Exhibit 9—Continued

Page 2142 of S. F. Vol. IV omitted.

[fol. 244] Laredo

General Summary—Distribution System Property

Acct.		Cost New	Depreciated
326	Land	$350	$350
329	Dist. Regulator & Measuring Station Structures	688	612
330	Other Distribution System Structures	1,069	946
332	Measuring & Regulating Equipment	2,864	2,407
333	Distribution Line Equipment—		
	Intermediate	85,588	73,627
	Low Pressure	290,822	245,156
334	Service		
	A—All except Industrial	83,393	70,884
	B—Industrial	8,225	6,992
335-336	Meters and Meter Installations (Inside City Limits)	67,250	57,162
337	Service Regulators	624	561
338	Other Distribution System Equipment		
	A—Industrial Installations	9,771	8,923
	B—Furniture & Fixtures	9,787	8,319
	C—Automotive Equipment	6,132	3,022
	E—Tools & Equipment	2,350	1,997
	Total	568,913	480,958
	D—Materials & Supplies	17,732	17,732

Defendant's Exhibit 9—Continued

[fol. 245] Pages 2144-2263 of S. F. Vol. IV omitted.

[fol. 246]

Summary

Transmission System Property

Laredo

Acct.		Cost New	Depreciated
316	Land	$4350.00	4350
318	Rights of Way	12207.00	12207
320	Transmission Regulating & Measuring Station Structures	2571.26	2486
321	Other Transmission System Structures	17359.18	14177
323	Transmission System Regulating & Measuring Station Equipment	13252.37	12326
324	Transmission Line Equipment	568097.23	473662
325	Other Transmission Line Equipment		
	A—Farm Taps	109.54	93
	C—Miscellaneous	485.10	412
	D—Furniture & Fixtures	1172.58	957
	E—Automotive Equipment	1696.15	849
	F—Tools & Equipment	272.83	232
353	General Communication Equipment	24824.73	23583
	Total	646397.97	545334
	Material & Supplies	3751	3751

[fol. 247] Pages 2265-2292 of S. F. Vol. IV omitted.

Defendant's Exhibit 9—Continued

[fol. 248]

Summary

Gathering System Property

Laredo

Acct.		Cost New	Depreciated
305	Land	37.20	37
307	Right of Way	156.10	124
310	Field Regulating & Measuring Station Structures	925.57	689
311	Other Gathering System Structures	15,199.95	12,616
313	Field Lines	1,737.15	1,440
314	Field Regulating & Measuring Station Equipment		
315	Other Gathering System Equipment		
	A—Drips	460.09	381
	B—Choke Racks	402.09	319
	C—Furniture & Fixtures	50.61	35
	D—Automotive Equipment	106.62	59
	E—Tools & Equipment	55.62	39
	Total	19,131.00	15,739
	Material & Supplies	420.93	421

[fol. 249] Page 2394, S. F. Vol. IV, to end of Defendant's Exhibit 9 omitted.

[fol. 250] Mr. Greene, as of September 1, 1932, what, in your judgment, is the total amount of direct construction costs which would be incurred at prices of labor and material current for that period in reproducing the distribution system property and parts thereof used and useful in serving gas in Laredo?

A. The distribution system property?

Q. Yes. Does that figure appear on page 4 of the Distribution System section?

* * * * * * *

A. Pardon me; I misunderstood the question. It does appear on page 4—$568,913.00.

Q. Is that exclusive of Materials and Supplies?
A. Exclusive of Materials and Supplies.
Q. Is it exclusive of Working Capital?
A. Yes, sir; exclusive of Working Capital.
Q. Is it exclusive of any General Construction Costs?
A. Yes, sir.
Q. And likewise exclusive of any items of going value?
A. Yes, sir.
Q. Does it represent the material and costs of installation—direct costs of installation which, in your judgment as an engineer, would be incurred in reproducing new as of September 1, 1932 this property?
A. It does, yes, sir.
[fol. 251] Q. Will you please state what, in your judgment, is the reproduction cost new less depreciation of this property as of September 1, 1932?
A. $480,958.00.

* * * * * * *

Q. Mr. Greene, I believe on yesterday you had completed your explanation of that portion of Defendant's Exhibit 9 dealing with distribution system property?
A. Yes, sir.
Q. Will you turn now to that section of Defendant's Exhibit 9 dealing with transmission system property and state whether or not that section in the first pages thereof contains an index and a summary sheet of the same kind as is contained in the section dealing with distribution system property?
A. It does; yes, sir.
Q. Mr. Greene, generally speaking, what transmission lines and parts thereof are valued and appraised in this section of Defendant's Exhibit 9?
A. Generally speaking, it is the line from the Laredo city gate to Pescadito Junction, from Pescadito Junction to Jennings Junction, from Pescadito Junction to Carolina-Tex., and from Aguilares to Oilton.
Q. State whether or not the index shows the pages at [fol. 252] which each classification of property is listed, described and appraised?
A. Yes, sir; it does.
Q. And state whether or not the summary sheet to this section of the exhibit reflects the cost new and the repro-

duction cost new less depreciation of each property account as reflected in the distribution section of this exhibit?

A. It does.

Q. And by use of the index and summary sheet in the same way and manner in which you use it in connection with the distribution system section may you find all of the detail and the same character of detail with respect to your appraisal of these properties as you testified to yesterday with respect to distribution property?

A. Yes, sir.

Q. And, Mr. Greene, what, in your judgment, would be the cost of material and installation at prices current as of September, 1932, to reproduce new the transmission system properties used and useful to serve Laredo? Refer now to the summary sheet.

A. The total of the direct structural cost on the reproduction new basis, $646,397.97.

Q. And on the reproduction cost new less depreciation basis?

A. Reproduction cost new less depreciation, $545,344.00.

• • • • • • •

[fol. 253] Q. And what gathering system or systems, and parts thereof, do the sections of this exhibit relating to gathering systems, cover?

A. They cover the gathering systems in the Jennings area.

Q. And where, generally speaking, are those located?

A. At the intersection—near the intersection of the Pescadito-Jennings transmission line and the Bruni to Monterrey line.

Q. Mr. Greene, why as of August 31, 1932 was any part of the gathering system which they existed in what is sometimes referred to as the East Jennings field included in this inventory and appraisal?

A. You say why was it included?

Q. Yes.

A. Because at that time these gathering lines were used and useful in supplying Laredo with gas.

Q. And do you know, from the examination of records or otherwise, whether gas was taken from that East Jennings gathering system during the year 1932, for delivery to Laredo?

A. I know that it was, yes, sir,—from the examination of records.

• • • • • • •

[fol. 254] Q. Do you know what the occasion—one particular occasion was for getting that gas in the East Jennings field?

A. Well, one particular reason was due to a blow-out in the Carolina-Tex line, as I recall it.

Q. Due to a blow-out in the Carolina-Tex line?

A. Yes, sir.

Q. Between what points, if you recall?

A. Between Pescadito and Carolina-Tex is as near as I can define the blow-out. I don't know just where it was.

• • • • • • •

Q. Turn, now, to the first large summary sheet in the exhibit, and state whether or not, Mr. Greene, that brings forward in summary form the reproduction cost new less depreciation of the gathering system property, the transmission system property, and the distribution system property.

A. Yes, sir, it does.

Q. And what are the account numbers shown on the extreme lefthand side of the page?

A. You say, what are they?

Q. Yes.

A. Those are the account numbers of the uniform classification of accounts.

Q. By the National Association?

[fol. 255] A. That is prescribed by the National Association of Railway and Public Utility Commissioners.

Q. And what appears in the next column?

A. A description of the property.

Q. And then you have a double column there, headed "Before Allocation".

A. Yes, sir; One is Reproduction—the first column is Reproduction Cost New, and the second column shows the Reproduction Cost New Less Depreciation.

Q. Direct structural costs only?

A. Contained on the summary page, all the costs are shown.

• • • • • • •

Q. Now, have you prepared in the form of an exhibit a statement showing your estimate and computation of the reproduction cost of the general construction expenditures which, in your judgment, would be incurred in constructing this property?

A. I have, yes, sir.

Mr. Coates: We ask that this instrument be marked Defendant's Exhibit 10, for identification, and we offer it in evidence. (Thereupon the document above referred to was marked Exhibit 10.)

[fol. 256] The following are typed portions from pages 2444-2451, S. F. Vol. IV.

[fol. 257] DEFENDANT'S EXHIBIT No. 10

Page 1

United Gas Public Service Company

Property for Service in the Laredo, Texas, Area

Distribution System and Field Gathering and Transmission System

Details of General and Undistributed Structural Costs

1. Construction Program:

The construction of the entire Distribution System and Transmission and Gathering System is considered as being done with an experienced construction organization.

2. Preliminary and Organization Period:

The period of preliminary and organization will be at least six months.

3. Construction Period:

(a) Period of initial field work, moving construction materials and equipment to job—1 month.

(b) Period of actual construction of main units of work —10 months.

(c) Period of clean-up, final construction, closing of accounts, and turning system over to operating forces—1 month.

Defendant's Exhibit No. 10—Continued

[fol. 258] Page 2

Preliminary and Organization Expenses

Allowance of $43,000

Expenses Provided For:

Expenditures necessary and incident to the organization of the Companies and putting them in readiness to do busines-, including:

1. Cost of preliminary engineering reports and estimates of cost, preliminary title and ownership reports, market analyses and economic surveys of territory, study and geological reports on available gas supply, estimates of probable operating expenses and revenues, and preparation of full reports on project.
   All of the above estimated at $10,000
2. Fees and payments to governments and political subdivisions thereof for the privileges of incorporation and doing business, including charters, filing fees and expenses, permit fees and expenses, franchise taxes, and cost of franchise election; also fees and expenses of registrars, transfer and local agents; also printing costs of indentures, bonds and stock, stamp taxes and recording fees.
   All of the above estimated at $8,000
3. Legal expense in connection with incorporation, organization, payment or acquisition of capital, and privileges of doing business, including advice and services in connection with capital structure, financial set-up, and opinions on all legal phases of project, drafting and obtaining corporate charters and permits, drafting all papers and attending meetings in connection therewith and with organization; also drafting stock and bond certificates, etc.; also services and opinions on property owned or to be owned by operating companies, including fees of attorneys and expenses.
   All of the above estimated at $10,000

Defendant's Exhibit No. 10—Continued

4. Salaries and expenses of owner's officials engaged in initiating, supervising, directing and assisting in the preliminary and organization work and in checking and analyzing results (or remuneration required by promoters of project together with their expenses).	
All of the above estimated at	$15,000
	$43,000

[fol. 259] Page 3

Engineering and Supervision During Construction

Allowance of $72,094.00

Expenses Provided For:

All expenditures for the services of consultants and resident engineers, draftsmen, construction superintendent, and their expenses including office expenses such as rent, light, heat, water, telephone and telegraph, automotive and personal expenses, prior to and during the period of actual construction.

This item does not include the cost of engineering services during the period of corporate organization, nor the direct charges for supervision covered by the salaries of field superintendent, foreman, inspector, timekeeper, material clerk, and construction engineer, which are assignable to specific construction.

Detail of Organization and Cost per Month

1 Sponsor Engineer	$350 per month	$350.00
1 Resident Engineer	275 per month	275.00
2 Office Engineers	250 per month	500.00
1 Field Engineer	250 per month	250.00
1 Coating Engineer	200 per month	200.00
1 General Superintendent	400 per month	400.00
1 Assistant Superintendent	350 per month	350.00
1 Chief Draftsman	200 per month	200.00
6 Draftsmen	150 per month	900.00
3 Party Chiefs	225 per month	675.00
9 Rodmen and Chainmen	125 per month	1,125.00

Defendant's Exhibit No. 10—Continued

2 Field Draftsmen	150 per month	300.00
1 Stenographer	125 per month	125.00
8 Automobile Expense	60 per month	480.00
Expenses for Sponsor Engineer, Resident Engineer, Field Engineer, Coating Engineer and Superintendent		959.00
All office rent, telegrams, telephone, prints, and miscellaneous items		500.00
Total Cost per Month—Maximum Organization		$7,589.00

[fol. 260] Page 4

Development of Expenses:

During the first month of preliminary and initial field work the organization as outlined above will function at about 80% of its maximum:

$7,589 x 80% = $6,071
$6,071 x 1 month = ... $6,071.00

During the first six months of actual construction the entire organization would be required.

$7,589 x 6 months $45,534.00

During the next three months of construction the organization could be reduced to possibly 70% of its peak, or

$7,589 x 70% = $5,312
$5,312 x 3 months $15,936.00

During the last two months of construction and clean up, the organization would be reduced to possibly 30% of its peak, or

$7,589 x 30% x 2 = ... $4,553.00

Total Engineering & Supervision During Construction $72,094.00

Defendant's Exhibit No. 10—Continued

[fol. 261] Page 5

Administration and Legal Expenses During Construction

Allowance of $48,661

Expenses Provided for and Basis of Allowance:

Salaries of General Office officials and employees and General Office expenses that will be incurred in connection with the administration, accounting and other general supervisory functions, except engineering, construction supervision, and stores expense.

All legal expenses incurred on account of construction, including advice and services in connection with drafting all legal instruments, contracts, and opinions; handling of disputes, and claims, and suits; preparation of reports; notary and other fees, etc.

Function of Organization and Monthly Cost:

1. General direction of the enterprise and formulation of policy.
2. Handle all payrolls and material accounts.
3. Distribution of all labor and material charges to standard accounting procedure.
4. Keep records by units of all charges made to job.
5. Keep detailed cost accounts of all construction.
6. Prepare all monthly reports and statement covering expenditures and progress of work.
7. Prepare special statements for bankers and trustees.

Detail of Organization and Cost per Month:

1	Administrative Head	@ $500 per mo.	$500
1	Chief Clerk	@ 250 per mo.	250
1	Asst. Chief Clerk and Price Clerk	@ 200 per mo.	200
1	Property Accountant	@ 250 per mo.	250
2	Bookkeepers	200 per mo.	400
2	Distribution Clerks	175 per mo.	350
3	Utility Clerks	150 per mo.	450
1	Paymaster	250 per mo.	250
2	Timekeeper and Payroll Clerks	125 per mo.	250
3	Stenographers and File Clerks	90 per mo.	270

Defendant's Exhibit No. 10—Continued

1 Secretary (Administrative Head & Office Manager)	125 per mo.	125
2 Stenographers and Typists	90 per mo.	180
Company Counsel and office expense		500
Claim Adjuster including expenses		200
Office rental and expenses		700
Supplies, telephone and telegraph expense		300
Automobile expense		250

[fol. 262] Page 6

Incidental and traveling expense	$300
Total per Month—Maximum Organization	$5,725

Development of Expenses:

During the first month of preliminary and incidental field work the entire organization would function at probably 50% of its maximum.

$5,725 x 50% = $2,862.50
$2,862.50 x 1 month = ... $2,862

During the first six months of actual construction the entire organization would be required—

$5,725 x 6 months $34,350

During the next 3 months of the construction period the organization could be reduced to about 50% of its maximum—

$5,725 x 50% = $2,862.50
$2,862.50 x 5 months = ... $8,587

During the last two months of construction, the organization could be reduced to about 25% of its maximum—

$5,725 x 25% = $1,431
$1,431 x 2 months = ... $2,862

Total Administration and Legal Expense During Construction	$48,661

Defendant's Exhibit No. 10—Continued

[fol. 263] Page 7

Interest During Construction

Allowance of $54,888

Interest during construction represents the loss of interest that will accure on money expended in labor and materials prior to and during the construction period in which the plant is built.

An analysis of the Company's records shows that, with money at 8% per annum, interest during construction is 3.9256% on the capital expended.

Development of Expense:

Interest during construction is taken on the sum of the following items:

Physical property—including land,
Preliminary organization expense,
Engineering and supervision expense,
Administration and legal expense,

and amounts to $54,888

[fol. 264] Page 8

Taxes During Construction

Allowance $6,784.00

Expenses Provided for:

All taxes, assessments and fees except special taxes for public improvements, levied and accrued on property owned by the Company during the construction period.

Basis for Allowance:

It is assumed that during the construction period, not less than 50% of all material entering into the construction of the plant would be taxable. The construction period

Defendant's Exhibit No. 10—Continued

being one year, the taxes during construction are as follows:

Annual Tax:

Laredo Distribution System	$8,817.45
Transmission System	4,750.88
Gathering System	0.00

Taxes During Construction:

Laredo Distribution	$4,409.00
Transmission System	2,375.00
Gathering System	0.00
Total Taxes During Construction	$6,784.00

End of Defendant's Exhibit 10.

[fol. 265] Q. Now, Mr. Greene, in the same way as Defendant's Exhibit No. 9, have you attempted to make this exhibit self-contained and self-explaining?

A. Yes, sir, I have attempted to.

Q. In the determination, Mr. Greene, of the amount of general construction expenditures or general and undistributed construction costs, what is one of the first things that you need to determine?

A. You have to determine your construction period, I would think would be the first thing.

Q. And have you had a substantial amount of experience in determining the probable time which would elapse from the time you first started to make plans and specifications on a job of constructing gas property until the time that property was completed?

A. Yes, sir, I have had considerable.

Q. And, in fact, does the Company attempt to construct its property under a fairly well defined time program?

A. Yes, sir.

Q. And have you computed and set forth in this exhibit the construction period?

A. Yes, sir, I have.

Q. And on what page of Defendant's Exhibit 10 does such statement appear?

[fol. 266] A. Page 1.

Q. On Page 1?

A. Yes, sir.

Q. And in your judgment, how long would it take to construct this property, starting with the period of initial field work and ending with the period of clean-up or final construction, closing of accounts and turning system over to operating forces?

A. One year.

Q. Now, is it your testimony that under forced construction this property could not be put in in a shorter time than that?

A. No, sir, I wouldn't say that. I think it could be.

Q. But, proceeding in an orderly manner, without either haste or delay, and proceeding in the ordinary way in which these properties are prudently and economically constructed, do you regard this construction period as reasonable?

A. It is just about the construction period that I would anticipate for the construction of a project of this kind.

Q. What is the first item of undistributed structural costs or general construction expenditures—You use those terms interchangeably, do you not, Mr. Greene?

A. Yes, sir.

[fol. 267] Q. What have you set forth in Defendant's Exhibit 10?

A. The preliminary and organization expense.

Q. And, by the way, does this show the undistributed construction costs simply for the distribution system or the transmission system, or for this entire property?

A. No, sir, these general construction expenditures have been calculated for the project as a whole, including distribution, transmission, and gathering.

Q. In other words, if this property were reproduced, do you think that the most economical way to do it would be as one general construction job?

A. Yes, sir, I think that would be the most economical way, and that is the way it would be done.

Q. Does that mean that you would simply use one construction crew?

A. We would have one construction management, yes, sir, and probably several or a good many different crews.

Q. But if you, as Chief Engineer of the United, were going to put this property in down there, you would handle it as one general construction job?

A. That is right, yes, sir.

Q. So these undistributed construction costs which you show here are those which you estimate would be incurred for the entire property, including gathering, transmission, and distribution?

[fol. 268] A. Yes, sir, that is true.

Q. And I believe you have already stated that these are costs which in their nature apply to the whole or large parts of a construction job, rather than to a foot of pipe or a measuring station or a house meter, or something of that sort?

A. Yes, sir, I stated that yesterday.

Q. What classification of undistributed structural costs does page 2 of Defendant's Exhibit 10 relate to?

A. The preliminary and organization expense.

Q. And does that exhibit set forth on page 2 the items and operations making up this character of expense and the amount of expense estimated to be incurred for each main subdivision of this character of expense?

A. Yes, sir, it does.

Q. Now, has anything been included by you in your direct construction costs for preliminary and organization expense?

A. No, sir.

Q. Turn to page 3 and state what that page and page 4 of Defendant's Exhibit 10 cover.

A. Page 3 shows our estimate of the engineering and supervision during construction, and also the detail of the organization that we would set up and the cost of this [fol. 269] organization per month; on page 4 we have shown the number of months that this organization would be functioning.

Q. Now, Mr. Greene, in estimating the amount of engineering and supervision costs,—and by the way, by supervision what do you mean—engineering supervision?

A. Yes, engineering supervision.

Q. * * * which will be incurred in a particular construction job on property to be built by United; do you proceed in this same way?

A. I do, yes.

Q. And I see you have a detail of an organization and a cost per month?

A. Yes.

Q. As of 1932, are these salaries which you show here

for your superintendent and draftsmen and field engineers and so forth the salaries that were actually being paid by United to men holding these positions?

A. Yes, the salaries that we have indicated are the salaries that we were actually paying to the men holding the positions that are indicated in the first column.

Q. And would you use men holding these positions and drawing these salaries, and would you have used them in the reconstruction of this property in 1932?

[fol. 270] A. Yes, I would.

Q. Now, Mr. Greene, is that entire engineering organization or is the full time of that engineering and supervision organization necessary to the construction of this property for the entire twelve months total construction period?

A. No, sir; I do not believe it would be necessary for the entire twelve months.

Q. And have you reflected on page 4 the proportionate amount of time for each main subdivision of the construction period?

A. Yes.

Q. The proportionate amount of time of this organization which would be required by this job for each main construction period?

A. Yes, we have. During the first month we have estimated that it would function at 80 percent, and the next six months at 100 percent, and during the next three months at about 70 percent, and the last two months at 30 percent.

Q. In other words, as the work is being completed and cleaned up, you use less and less engineers on the job?

A. Yes, that is correct.

Q. Is it universal in your experience that the major portion of the engineering work is done prior to and in the early and middle stages of a construction job?

A. Yes, it is mostly done at those times.

[fol. 271] Q. Turn to page 5, Mr. Greene, and state to what classification of undistributed structural costs that page and the following page 6 relate?

A. That is the administration and legal expense.

Q. And have you likewise set up a detail of the organization which in your experience and judgment, would function in an administrative and legal capacity in connection with this construction work?

A. Yes, I have.

Q. In so far as you show salaries in that set up, are those the salaries which you ascertained were actually paid and being paid by the company during that period?

A. Yes.

Q. And where you do not show the actual salary, the figure given is your estimate, is it?

A. Yes.

Q. And would the entire time of this organization be employed on this job for the full twelve months of construction?

A. No, sir; not the entire time for twelve months.

Q. Does page 6 reflect in the same way as for the engineering organization, the prorata part of the time of this organization which would be required on this job and be engaged in this construction job?

A. Yes, it does.

[fol. 272] Q. Now, Mr. Greene, what classification of undistributed construction costs appears on page 7?

A. That is the interest during construction.

Q. And at what per annum rate, Mr. Greene, have you computed the interest during construction?

A. At eight per cent.

Q. And will you explain briefly how you arrived at the amount shown for interest during construction on this job, and the basis or the source of your computation?

A. I used 3.92 per cent of the capital expenditure and we arrived at that by determining from analysis of about $20,000,000.00 worth of construction work we did, how much interest we actually paid on this construction.

Q. In other words, you determined the amount of interest paid on capital invested in construction materials and operations from the time the money was provided for gas properties, until the property was completed and turned to operation; is that right?

A. Yes.

Q. And the last item shown on page 8 is the item of taxes during construction?

A. Yes.

Q. And how did you arrive at that figure, Mr. Greene?

[fol. 273] A. That figure is the figure that was actually paid for taxes during the year 1932, I believe.

Q. It is based on that figure?

A. Yes.

Q. But what portion of the taxes paid during the year 1932 have you included here for taxes during construction?

A. Well, all the taxes except special taxes for public improvements.

Q. Look under the heading, Basis for Allowance, Mr. Greene.

A. Yes. It is assumed that during the construction, not less than fifty per cent of all material entering into the plant would be taxable. The construction being for one year, taxes during construction are as follows: * * *

Q. Then you have taken half of one year's taxes—that is, the taxes for the year 1932, as your allowance for taxes during construction, have you?

A. That is correct, yes.

Q. Refer once more, Mr. Greene, to Defendant's Exhibit 9, and state whether or not the five general classifications of undistributed structural costs set forth in Defendant's Exhibit 10 are likewise set forth on the summary page of Defendant's Exhibit 9?

A. They are.

Q. Under all columns shown there?

[fol. 274] A. Yes, they appear on all columns.

Q. And have you allocated these undistributed construction costs in the same way as you have allocated the direct structural costs of the property to which they pertain?

A. Yes.

Q. Now, Mr. Greene, in your actual experience, is there anything visionary or imaginary about the incurrence of costs of this character?

A. No, sir; these costs are very real.

Q. In your actual construction experience, have you ever been able to escape them?

A. No sir, we have not.

Q. And do these figures represent your best judgment as to the amount and nature of this expenditure which would be incurred if this property were reproduced in 1932?

A. They do, yes.

Q. And I believe you have stated, or if you have not stated, then please say whether the amount of these undistributed structural costs have been apportioned in the same proportion as the direct structural costs of the physical property to which they relate?

A. They have, yes.

Q. Mr. Greene, will you read into the record the total amount before allocation and after allocation, reproduction [fol. 275] cost new and reproduction cost new less depreciation of the direct and undistributed structural costs?

* * * * * * *

A. Total direct structural costs, before allocation——

Q. The total of the direct and undistributed structural costs, and so that counsel and the Court may follow what you are reading, where do those figures appear in Defendant's Exhibit Number 9?

A. On the summary page.

Q. And opposite what account description?

A. Total, including general construction expenditures.

Q. Well, does that likewise include your materials and supplies in stock?

A. No, sir; that does not.

Q. Will you read those figures which I have asked you for, including materials and supplies in stock?

A. Yes, that is under sub-total, reproduction cost new before allocation, $1,483,466.00; reproduction cost new less depreciation, $1,263,674.00

Q. And that is likewise before allocation?

[fol. 276] A. Yes, before allocation. Now, allocated portion, reproduction cost new, $1,232,024.00; and the reproduction cost new less depreciation, $1,049,679.00.

* * * * * * *

Q. And you show cash working capital for these properties I believe, in the sum of $21,500.00?

A. Yes.

* * * * * * *

Q. * * * what does the amount of cash working capital you have shown there consist of?

A. It consists of 45 days operating expenses, plus minimum bank balances.

* * * * * * *

Q. And were those figures furnished to you by the accounting department of the company?

A. Yes, they were.

Q. Now, in Defendant's Exhibit No. 9, Mr. Greene, have you included any amount for going value?

A. No, sir, I have not.

[fol. 277] (There was tendered in evidence an exhibit by the witness of going value, and was marked, for purposes of identification, Defendant's Exhibit No. 11, but all questions referring thereto were struck from the record, and discussion thereof was deferred that counsel for plaintiff might examine same before it was admitted.)

Q. Now, Mr. Greene, have you made any attempt to bring your inventory and appraisal of this property down to date?

A. Yes, I have.

Q. Down to what date?

A. Down to December 31, 1933.

Q. And why have you done that?

A. In order to bring it down to date and take into consideration the property as it exists today, and the reproduction cost new as of this date.

Q. And likewise any changes in operating conditions or property used and useful for the service of Laredo?

A. Yes.

Q. And to reflect prices current as of December 31, 1933?

A. Yes.

Q. And have you done that by a written supplement to Defendants' Exhibit No. 9?

A. Yes, I have.

Q. Have you prepared that supplement in the form of an exhibit?

A. Yes.

[fol. 278] Mr. Coates: We ask that this instrument be marked for identification, Defendant's Exhibit No. 12, and we offer it in evidence.

* * * * * * *

The Court: If there is no objection now, the exhibit will be admitted.

(Thereupon, said instrument was offered and received, marked Defendant's Exhibit Number 12.)

[fol. 279] The following is page 2458 from S. F. Vol. IV.

[fol. 280]

DEFENDANT'S EXHIBIT 12

United Gas Public Service Company

Property for Service Within the City of Laredo, Texas

As of 12-31-33

(From Sheet 1—Exhibit)	Before Allocation		Allocated Portion	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Gathering System Property Including Land & Rights of Way	$2,772	$2,433	$1,890	$1,659
Gathering System Property Excluding Land & Rights of Way	2,735	2,396	1,864	1,633
Transmission System Property Including Land & Rights of Way	646,397	545,334	440,649	371,754
Transmission System Property Excluding Land & Rights of Way	629,840	528,777	429,362	360,467
Distribution System Property Including Land	568,913	480,958	543,938	459,844
Distribution System Property Excluding Land	568,563	480,608	543,603	459,509
Increase in Labor Costs due to N.R.A.—Gathering System	$251	$220	$171	$150
—Transmission System	33,307	27,961	22,705	19,061
—Distribution System	42,540	35,959	40,672	34,380
*Total Direct Structural Costs Including Land & Rights of Way	$1,294,180	$1,092,865	$1,050,025	$886,848
**Total Direct Structural Costs Excluding Land & Rights of Way	$1,277,236	$1,075,921	$1,038,377	$875,200

General Construction Expenditures				
*Preliminary and Organization Expense	$45,086	$45,086	$36,655	$36,655
*Engineering and Supervision Expense	75,612	63,695	61,472	51,812
*Administrative & Legal Expense	51,089	43,037	41,535	35,008
Taxes During Construction	6,784	6,784	5,504	5,504
Interest During Construction	57,548	48,861	46,702	39,661
Total General Construction Expenditures	$236,119	$207,463	$191,868	$168,640
Land & Rights of Way Plus 10%	$18,638	$18,638	$12,813	$12,813
Total Including General Construction Expenditures	$1,531,993	$1,302,022	$1,243,058	$1,056,653
Materials & Supplies in Stock—Gathering	$421	$421	$287	$287
—Transmission	3,751	3,751	2,557	2,557
—Distribution	17,732	17,732	16,954	16,954
Sub-Total	$1,553,897	$1,323,926	$1,262,856	$1,076,451
Cash Working Capital	.....	.....	20,867	20,867
Total Valuation (Exclusive of Going Concern Value)	.....	.....	$1,283,723	$1,097,318

[fol. 281] A. D. GREENE, recalled.

Redirect examination.

Questions by Mr. Coates:

Mr. Coates: The Defendant now offers in evidence the instrument marked Defendant's Exhibit Number 11 for identification.

The Court: Any objections to it?

Mr. Bobbitt: I don't think we have any objections, but I would like to ask the witness one or two questions.

The Court: All right.

Mr. Bobbitt: Mr. Greene, did you prepare this exhibit?

A. Yes, Sir.

Mr. Bobbitt: And all the subject-matter therein contained?

A. Yes, sir.

Mr. Bobbitt: Did you assemble that and write it?

A. Yes, sir.

(Thereupon, the instrument previously identified as Defendant's Exhibit No. 11, was offered in evidence by the Defendant, and a copy of same is shown on the pages next following:)

[fol. 282] DEFENDANT'S EXHIBIT No. 11

Pages 1-4

United Gas Public Service Company

Going Value

Gas Properties for Service Within the City of Laredo, Texas

Existence of Going Value in Laredo Properties:

A. These properties have inhering in them a substantial element of going value, because they are in connected and co-ordinated operation, being operated with a trained and efficient personnel, and the fact that the Company by continuous effort over a period of 22 years has acquired its present consumer and consumption use.

B. Natural gas is used almost universally for fuel in Laredo.

C. The number of natural gas consumers in Laredo as compared to total population is large, and as compared with the public acceptance of other forms of utility service is extremely good.

The past history of the United Gas System in Texas shows that the average time required to reach the point at which growth of local distribution becomes normal is something over three years. At this point, however, neither the number of customers nor the consumption per customer has reached saturation, nor more than approached the percent of use afterwards capable of being obtained. New customers have to be persuaded to install gas burning equipment, and attached customers induced to use gas more extensively. The number of customers attached to the Laredo property with relation to the total population, and compared with consumer use in other cities of like size and character, proves beyond a reasonable doubt that customer use has been approached, if not actually reached, and an [fol. 283] increase in customers may be obtained only through an increase in population, or development of new uses for natural gas.

Going Value Should be Added as a Separate Item:

In the appraisal of these properties the amount of going value must be added as a separate item because this element of value has not been included or taken into consideration in any other part of the appraisal.

These properties have been valued by the method of deducting existing depreciation from the present reproduction cost new, the value of the land having been taken separately. The physical elements of these properties have been inventoried and classified, and the current unit cost of every item has been applied to arrive at the total cost of the material, together with the direct cost of constructing these materials into the present natural gas gathering, transmission, and distribution properties.

The general construction expenditures, which include the preliminary and organization expenses, engineering and supervision expenses, administration and legal expenses, taxes during construction, and interest during construction, are inseparable from the construction of a property of this kind, and are an inevitable and necessary part of the cost.

They are as much construction cost as material and labor, even though they are not capable of physical identification after the completion of the construction work, and in their nature attach to the whole or large parts of the property rather than to any particular unit.

[fol. 284] Existing depreciation is then applied to all depreciable property, and to this is added cash working capital and materials and supplies on hand, to obtain the value of the mere physical elements of these properties, built and operable, but not actually operating or with customers connected or business established.

Thus far no consideration has been given to, nor has anything been included for, going value; and unless included as a separate and additional item, going value will be omitted.

Measure or Amount of Going Value:

Going value, while it does exist in these properties, is an intangible item of value. Its amount expressed in dollars cannot be calculated with precise mathematical accuracy; it therefore must be estimated. From my knowledge of the worth of properties such as those serving natural gas in Laredo as they now exist, having the elements of going value above set forth, I estimate the amount of such value to be not less than $120,000 over and above what it would cost to reproduce such physical property as is used and useful for serving the City of Laredo, at the construction cost prevailing over the last two years and prevailing today. It is my belief that if this property were turned over complete to an operating organization in all physical details, but with no business attached, it would cost at least the amount I have estimated above to develop the business, co-ordinate the operation of the property, and bring the operating personnel to its present state of efficiency and familiarity with its duties. United Gas Public Service Company has built a number of properties of this character and has gone through the period of developing the use of its gas, co-ordinating the operation of such properties, and bringing the operating personnel to a state of efficiency. It is my judgment, based on my experience and observation, that United Gas Public Service Company or any other operating gas company, would gladly pay 10% or more in [fol. 285] addition to all construction costs to obtain such

properties with business attached and developed in co-ordinated operation, and with a trained personnel thoroughly familiar with their duties.

[fol. 286] By Mr. Coates:

Q. Mr. Greene, please refer to the instrument marked for identification as Defendant's Exhibit Number 11. Now, Mr. Greene, will you please state whether or not the subject-matter of this exhibit set forth on pages 1, 2, and 3 thereof contains your statement under oath of the elements of going value which you find to exist in the Laredo property, or your opinion with reference to the addition of going value as a separate element, and your estimate of the going value in that property?

A. It does.

Mr. Coates: I believe that is all.

[fol. 287] Redirect examination.

Questions by Mr. Coates:

* * * * * * *

Q. Now, Mr. Greene, you may have answered this question; but are these unit costs which you have used here the costs which you would use in the estimate of any construction job of this character, if the property were actually to be built?

A. They are, yes, sir.

Q. And do you actually use the units and the basic material for the units in the normal course of the company's construction work?

A. Yes, sir; I might not use precisely the same units, but they are built up in exactly the same manner—that is, the estimate is based on the Laredo area.

Q. Of course, you would not use the same units for different construction conditions, but does this represent the computation, and the character of computation of units which you actually employ in planning and carrying through construction work?

A. This estimate is made almost exactly in the same manner that we prepare our construction expenditure requisitions.

Q. Which is in the greater detail,—this appraisal, Defendant's Exhibit No. 9, or your estimates for expenditure requisitions?

[fol. 288] A. About the same amount of detail.

* * * * * * *

Q. In your judgment, where you are pricing out an inventory—that is, an inventory of property which is already installed, can you come closer to estimating the actual cost than in the case of property to be installed which is not in place?

A. I think you can come closer, yes, sir.

Q. Now, in computing the cost of construction jobs which have been actually done, and the analyzed costs of which you have seen, does the actual as compared with the estimated always conform exactly, Mr. Greene?

A. No; not quite exactly.

Q. In your estimating work and in your construction cost analysis, what has been the margin of error, you might say, in the actual as compared with the estimate prior to construction?

A. In a composite of all the jobs we estimate I believe we come within two or three per cent of the correct total. However, occasionally, in a specific instance, we might miss an estimate, five or ten per cent, on a small job.

Q. Taking the overs and shorts, why the average has been within two to three per cent?

[fol. 289] A. And if any worse than that I think it is a bad estimate; and not only I, but other people think so.

Q. And other people tell you about it?

A. They certainly do.

Q. That does not mean that every job on which you have computed the cost of construction, that your actual, as against the estimated, has been within two to three per cent?

A. No; not on every job.

Q. But have you in all your engineering and construction experience ever missed an estimate as much as the difference between $1,225,000.00 and $885,000.00?

A. No, sir; I have not.

Q. Or anything like that?

A. No, sir.

Q. That is, comparison of actual against estimated?

A. That is correct.

Q. Mr. Greene, have you made a study of these properties, their nature, and location, for the purpose of ascertaining the annual reserve accrual necessary to provide for retirements and replacements of property?

A. Yes, sir.

Q. Have you made a study with respect to proper and reasonable reserve accruals with respect to gathering lines?

[fol. 290] A. Yes, sir; I have.

Q. What, in your judgment, is a proper and reasonable annual reserve accrual to set aside in a reserve for retirements and replacements to cover the retirement and replacement of gathering lines of the kind included in Defendant's Exhibit 9?

A. I think ten per cent per year of the cost.

Q. What limits the life or the usefulness in place of a gathering line?

The Court: I am positive you went over that the other day.

Mr. Coates: Yes, I believe I did, but I won't accumulate it with this witness either.

Q. Now, Mr. Greene, have you made a similar study with respect to the proper annual reserve accrual for retirements and replacements upon the transmission lines and property and equipment which are included in defendant's Exhibit No. 9?

A. Yes, sir; I have.

Q. Have you arrived at any conclusion as to a fair, proper, and reasonable annual reserve accrual for such transmission system property and equipment?

A. Yes, sir; for these particular lines I believe it should be about six per cent per year.

[fol. 291] Q. And have you made a similar study with respect to such accrual for the distribution system property and equipment?

A. Yes, sir.

Q. And what has been the result of your study in connection with that?

A. I think on the distribution about five per cent per year.

The Court: Are you about through with this witness?

Mr. Coates: Yes, sir.

Q. And, in your judgment, would reserve accruals in the percentage amounts you have named for each of these main classifications of property be necessary so as to have on hand in a reserve amounts sufficient to take care of the retirements and replacement of these items of property as those retirements and replacements occur?

* * * * * * *

A. Yes, sir; I think these amounts would be necessary.

[fol. 292] P. McDonald Biddison, a witness for the Defendant.

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.

A. P. McDonald Biddison——

Q. In what business are you engaged, Mr. Biddison?

A. Consulting Engineer, specializing in natural gas and petroleum.

Q. How long have you been connected in an engineering capacity, with the natural gas and petroleum business?

A. Twenty-eight years.

Q. Will you give a statement, Mr. McDonald, of your experience in connection with those businesses?

A. My first work in natural gas began in May, 1905, at Columbus, Ohio, as draftsman on the preparation of details and plans for installations by the Kansas Natural Gas Company in Kansas. I was later engaged at the same location and under the same management as engineer by the Logan Natural Gas and Fuel Company, and became their Chief Engineer, having charge of construction and operation of compressor stations and electric plans in Ohio. In 1907 I went to Joplin, Missouri, as an engineer for Hope Engineering & Supply Company, working on estimates and [fol. 293] designs for pipe lines and compressor stations, and on estimates for sales of engines and machinery. From Joplin, Missouri, I went to Independence, Kansas, as Assistant to the Chief Engineer of the Kansas Natural Gas Company, and was occupied on construction of natural

gas compression and transmission equipment, and on the operation of those installations. In December, 1908, I went with the Columbia Gas & Electric Company, on the construction of their transmission system from West Virginia to Cincinnati. In 1910 I was with the Ohio Fuel Supply Company in Ohio, on the installation of compressing stations. In 1911 I was with the Texas Company at Port Arthur, Texas, on the installation of power equipment and reenforced concrete buildings. In 1912 I returned to the Ohio Fuel Supply Company, at Columbus, Ohio, and was associated with them until 1919. * * * During this period I was engaged largely on construction of transmission and compressing installations. During the period 1914 to 1918 I was also Consulting Engineer to the Lone Star Gas Company in Texas, advising them on the amounts of extensions required to serve their growing markets and furnishing designs for installations. From 1916 until 1919 I also had [fol. 294] supervision of gasoline production for the Ohio Fuel Oil Company in West Virginia. In 1917 and 1918 I also acted as Consulting Engineer to the United States Bureau of Mines, on was gasses. In the spring of 1919 I went to Mexico and was there engaged for two years on the designing and installation of oil lines, oil pumping stations, and off-shore oil loading stations. In the fall of 1921 I became associated with interests owning natural gas production in North Louisiana, and owning the Dallas Gas Company and the County Gas Company at Dallas, Texas. I acted as Consulting Engineer to these distributing properties until the time of their sale in 1927, and continued my connection with the producing properties in Louisiana until about the middle of 1928. During my association with these properties I estimated and reported on natural gas transmission projects from North Louisiana to all the major markets within reach of that field. Some of the projects so estimated upon were built upon the basis of my investigations and reports; some of the projects were supervised by me during their construction—either during that period or later. In 1928 I opened a consulting engineering office at Monroe, Louisiana, [fol. 295] and after making a valuation of the Fort Worth Gas Company and reporting upon a project for natural gas for Salt Lake City and Ogden, Utah, and a few minor reports, I became associated with the Southern Natural

Gas Company in the capacity of their Consulting Engineer, and so continued until the summer of 1930. I acted as their consulting engineer throughout the construction of their transmission system, from the Monroe, Louisiana, fields to Birmingham and Atlanta, Georgia, with its numerous branch lines. In the fall of 1930, I opened an office at Dallas, Texas, which office I still maintain and have been engaged since that date largely in valuations and reports for rate making purposes on natural gas properties.

Q. Mr. Biddison, are you able to state in terms of miles or approximate miles, of gas transmission lines, the extent of the gas transmission projects on which you have been engaged in a responsible capacity, either as engineer or in direct charge of construction?

A. Oh, some seven or eight thousand miles.

Q. And are you able to give a similar statement with respect to gas distribution systems?

[fol. 296] A. In terms of mileage?

Q. Yes.

A. No, I can not. I don't think I could even give it in terms of meters, because I have never at any time attempted to make a compilation of that. It would be probably in excess of 500,000 meters, though.

Q. Are you a graduate of any college?

A. I am a graduate of the Kansas State College of Agriculture & Applied Science, 1904, degree of Bachelor of Science in Electrical engineering.

Q. Mr. Biddison, are you familiar with the general location of the properties owned by the United Gas Public Service Company, transmission and distribution, which serve Laredo?

A. I am.

* * * * * * *

Q. Have you examined the inventory of the properties made, in so far as the same is summarized and contained in the appraisal by the United Gas Public Service Company, and furnished to the City of Laredo?

A. Yes, I have.

Q. Have you likewise made an examination of the instrument which has been introduced in evidence here, and marked for identification, Defendant's Exhibit No. 9?

[fol. 297] A. I did.

Q. For what purpose, Mr. Biddison?

A. For the purpose of determining whether the construction costs, including the undistributed general costs, as set out in the exhibit were in line with my own experience.

Q. And you accept the inventory quantities as contained herein as correct—you assume no responsibility for those?

A. I assume no responsibility for them, and assume they are correct; that is true.

Q. To what classification of direct and structural costs have you directed your examination, Mr. Biddison?

A. Well, in the distribution property, I have examined account 329, district regulator and measuring station structures; account 330, other distribution system structures; account 332, measuring and regulating equipment; account 333, distribution line equipment; account 334, services; accounts 335 and 336 combined, meter and meter installations; account 337 service regulators.

Q. Well, without answering the question with respect to other main classifications of property, why did you confine your examination to these property classifications which you have mentioned?

[fol. 298] A. Because they constitute by far the greater per cent of the total; I cannot give you that exact per cent exactly now, without a computation, but they constitute aproximately something like 95 per cent of the total direct structural costs of the distribution system.

Q. And what have you ascertained from your examination of the direct construction costs set forth in Defendant's Exhibit 9, and relating to these account classifications?

A. The conclusion which I have reached from my examination, was that the prices used on material were as low as the material could be purchased for as of the valuation date; that the unit costs for installation were closely in line with my own experience; that the wage rates used were lower than were being commonly paid at that time in other sections of this state for common labor, and that in general the costs of installed equipment, based on the labor rates used in the estimate were as low or lower than I would expect to estimate them in detail myself.

Q. And how do they conform, if they do conform to your idea of the actual direct construction costs which would be incurred in reproducing these particular items of property?

[fol. 299] A. I think they are very closely in line with the actual costs that would be incurred, if the same wage scales were used; if the wage scales be different from those used in the valuation estimates, the costs installed would be higher than those shown in the report.

Q. Mr. Biddison, have you made a similar examination of that Section of Defendant's Exhibit 9 dealing with transmission system property?

A. I have.

Q. And with respect to what property classifications therein shown?

A. Account 318, rights of way; account 320, transmission regulating and measuring station structures; account 321, other transmission system structures; account 323 transmission system regulating and measuring station equipment; account 324, transmission line equipment; account 353, general communication equipment.

Q. And again, why did you confine your examination principally to those account classifications, Mr. Biddison?

A. Because those classifications embrace nearly all valuable property. The amounts outside of those classifications are very small amounts.

Q. And what conclusion did you reach, based on your construction, knowledge, and experience, with respect to the appraisal figures shown in Defendant's Exhibit Num-
[fol. 300] ber 9?

A. I reach the conclusion from my investigations that the prices used in the evaluation were as low as the materials could be purchased for at the basic date; that the labor amounts were in line with my own experience very closely; that the wage scales used in the estimates were lower than actually being paid for similar work in other parts of Texas; that the total installed costs were in line with my own experience for the wage scales used, and that if a higher wage scale had been used a higher resultant cost figure for these items would have been obtained.

Q. And again, how do the appraised values reflecting direct construction costs of these property classifications conform to your judgment of the actual direct construction costs which would be incurred if this property had been reproduced as of the date shown in the appraisal?

A. If they had been reproduced as of the date shown in the appraisal, I think the cost of these items would have

been equal to or greater than the costs shown in the appraisal if the same wage scales had been paid as were used in the computations in the appraisal.

Q. Mr. Biddison, did you make any examination of De-
[fol. 301] fendant's Exhibit Number 9, with respect to gathering system property?

A. I did.

Q. And of what property classifications?

A. Account 310, Field Regulations and Measuring Station Structures; Account 313, Field Lines; Account 314, Field Regulating and Measuring Station Equipment.

Q. What conclusions did you reach from your examination and analysis of the appraisal figures reflected in Defendant's Exhibit Number 9, Mr. Biddison?

A. That the prices for materials used were as low as the materials could have been purchased for as of the date of the appraisal; that the unit costs for installation based upon the wage scales used were as low as could be expected the work could be done for, and they were in line with my own experience; that the total installed costs were in line with my experience, for the wage scales and the material prices used.

Q. Mr. Biddison, in your construction work, and your engineering work, and in your estimation of the cost of gas properties, have direct structural costs been the only costs which have been incurred?

A. Not by any means.

Q. Do you make that as a statement applying to all con-
[fol. 302] struction jobs in which you have been engaged or that you have supervised?

A. I do.

Q. What other general classification, or character of costs, if there is one, have you found to be incurred in the construction of property such as these properties are?

A. In addition to the District Structural Costs, there is a class of costs or expenses which are sometimes called Undistributed or General Costs—sometimes referred to as Collateral Construction Costs.

. . . . . .

A. This group embraces Preliminary and Organization Expense, Engineering and Supervision Expense During Construction, Administrative and Legal Expense During Construction, Taxes During Construction, and Interest Dur-

ing Construction. These subdivisions of the General and Undistributed Costs are the items of expense which are incurred, not piece-meal for each piece of property, but in general fashion for the property as a whole. They are generally carried in a firm's accounting practise as undistributed items, without any attempt to allocate them to specific pieces of property. It is true that some of these [fol. 303] items could be allocated, but there are no benefits accruing from the allocation that I can conceive of. Their incurrence is by the general organization; not by the groups handling specific properties; and in the classification of property provided for by the Uniform Classification of Accounts prescribed by various commissions and by associations of utility commissions these accounts are set up as general accounts.

Q. Now, Mr. Biddison, in your work in computing and estimating the costs of construction of a particular gas construction job, whether it be transmission or distribution, state whether or not it is your practise and your universal custom to include these costs?

A. It is.

Q. Why?

A. Because money must be provided with which to pay these costs; therefore, they must be included in the estimate on which the amount of money required is predicated.

Q. Suppose that only the amount of money was provided for the construction work, and available for the construction work, which would cover the direct construction costs; what would happen?

A. There would be no funds with which to pay for the plans and specifications, and inspection, and supervision, [fol. 304] while the job was going on. You would simply have a bunch of field superintendents out, each acting on his own initiative without knowing what to do; they would never get started under those conditions. There would be no organization with which to account for the funds provided for these general construction costs, nor to account for the material; there would be no forces with which to disburse the funds in payment for material or for labor. There would be no legal advice available to solve the difficulties that every construction organization gets into in a construction program. There would be no money to pay the interest on the funded debt that was to be

incurred, and upon failure to pay this interest a receivership would probably be in order. In other words, the job simply could not be completed, because there would be insufficient funds to care for all costs.

Q. Now, Mr. Biddison, have you examined Defendant Exhibit No. 9, with respect to the amounts of General Construction Costs therein contained?

A. I have.

Q. And have you examined Defendant Exhibit No. 10, which is a computation of those General Construction Costs?

A. I have.

Q. From your engineering and construction knowledge and experience what conclusion have you reached with re-
[fol. 305] spect to the reasonableness or not of the amount of the costs therein contained?

A. These general undistributed costs can be quite readily checked in an approximate manner on the basis of the relation which they bear in percentage to the total Direct Structural Costs. In Exhibit Number 9, the total for Preliminary and Organization Expense, Engineering and Supervision Expense, and Administrative and Legal Expense is $163,755.00. Applying to Direct Structural Costs, Including Land and Rights of Way, $1,234,441.00, the ratio is 13.3 per cent. The Interest During Construction figure is about four per cent—slightly under. The tax figure is about .55 of one per cent. The total General Construction Expenditures, shown in Exhibit 1, on the summary page, in the column Reproduction Costs New, amounts to less than 18 per cent of the total Direct Structural Costs, including Land and Rights of Way, which is a very reasonable figure, in view of the fact that the total of these costs is quite often found to run between twenty and twenty-five per cent.

Q. Now, you say "is quite often found to run"—explain that statement with respect to your own experience.

A. Well, on the Southern Natural Gas Corporation's con-
[fol. 306] struction work these general construction expenditures amounted to nearly 19 per cent of the Direct Structural Costs, and it is quite often that that ratio, instead of being 18 or 19 per cent, may be between 20 and 25 per cent of the Direct Structural Costs.

Q. Have you seen that ratio prevail in your actual experience?

A. Yes.

* * * * * * *

Q. Have you made any investigation of the property, operations, and business of the United Gas Public Service Company serving Laredo to determine whether there is any additional element of value inherent in those properties other than the direct construction costs and the general construction costs, about which you have testified?

A. Yes; I have.

Q. Please explain your answer.

A. To determine whether going value exists in a property it is necessary to know that it has business, that it is operating, that it is selling its product or service; that its product and service are in general demand and in general use; that the prospects are for a continuance of that [fol. 307] general use. And I have made enough investigation of this particular property to know that those conditions are fulfilled. The testimony given by Mr. Stein as to the number of meters in use, or the number of customers in Laredo on the gas system, as compared to the number of electric meters, water meters and telephones, shows a very wide use of gas service; in fact, a wider use in comparison to the number of consumers of electricity and of water than is usually found in a case of this sort. That means that the system is pretty well saturated as to number of available consumers, because it is the usual case that the number of water consumers in the community will exceed the number of gas consumers. Now, this system has been in operation down there since about 1910, as I recall it, when Laredo was a much smaller community that it now is. They started from nothing, and they have built up until they have, as of January 1, 1934, according to the testimony of Mr. Stein, nearly 4800 meters. The system is under the supervision of an organization manned by experts in the natural gas industry. It has its operating personnel established, and its operating routines established. Those are all elements that contribute to going. [fol. 308] value. The business is one which has been proved by experience generally, and in this particular locality to be one which will be generally accepted and used by the public.

Q. Well, Mr. Biddison, in Defendant's Exhibit Number 9, and in the Direct and General Construction Costs contained therein, have you from your examination found in the appraisal figures there any element or increment for the item "going value"?

A. No; there is no allowance in Exhibit Number 9 for going value. That exhibit embraces only the Direct Structural Costs, the General Construction Expenditures, the Materials and Supplies, and Cash Working Capital. Now, Going Concern Value is separate and distinct from those items. It is in no sense a part of them in total, or any portion of them. Going Concern Value does not begin its existence in a property as a part of the construction program, but as a part of the development program after construction.

. . . . . .

Q. And what conclusion have you reached, and what is the basis for that conclusion?

A. I think that in a property like the Laredo property that the going concern value is not less than ten per cent of the total of Direct Structural Costs and General and Undistributed Costs, which in this case have a total figure of something over $1,200,000.00. That would give a going concern value of about $120,000.00. Now, I base that conclusion upon having both bought and sold properties in [fol. 309] the past, and upon having made detailed estimates to measure going concern value in a large number of properties, in which I find that going concern value quite generally runs between ten and twenty per cent of the Direct Structural Costs and Undistributed Costs, generally.

H. L. Dickerson, Witness for Defendant.

Direct examination.

Questions by Mr. Coates:

Q. Please state your name?
A. H. L. Dickerson.
Q. By whom are you now employed, Mr. Dickerson?
A. Electric Bond & Share Company.

Q. Do you hold any official position with the United Gas Public Service Company?

A. I am a vice president and director of the company.

• • • • • • •

Q. Mr. Dickerson, are the operations of United Gas Public Service Company and its associated and affiliated companies supervised by any service organization?

A. They are.

Q. What service organization?

A. Electric Bond & Share Company.

[fol. 310] Q. Is that the company by whom you are employed?

A. It is.

Q. Can you, as briefly as possible, state the nature and extent and the kind and character of the services so rendered?

A. Yes.

Q. Will you please do so.

• • • • • • •

A. The United Gas Public Service Company operations are supervised by Electric Bond & Share Company. The services rendered by Electric Bond & Share Company cover all of the phases of operation, management and development of the properties, including accounting analyses, budgets, and forecasts, corporate matters, development programs, engineering, executive counsel and advice, factory information, financial matters, industrial development in the territories served, insurance of all kinds, merchandise and jobbing, new business, office investigations, purchasing, secretarial work, tax matters principally in connection with federal taxes; traffic and expediting shipments, and treasury department activities. Electric Bond & Share Company has been rendering this service to utilities since 1905. At the present time, it serves 77 groups of companies.

[fol. 311]

• • • • • • •

A. The services rendered cover the executive division, being the Chairman of the Board, the president, vice-presidents and their staffs, who consult on all matters of gen-

eral policy and consider and advise on specific major problems that come up in the operating problems current. The operating division of the organization follows in detail all of the operations of the company and consists of an operating sponsor who makes frequent visits to the field, assists in major problems and business and organization and personnel, and coordinates all of the services of the organization with requirements of the operating companies.

The corporate department handles law work, arrangements for credits and loans, appointment of trustees, registrars, and transfer agents; and it also handles the purchase of bonds for sinking funds, checks mortgages and contracts, franchises, permits, tax laws and pending litigation.

The engineering department, through a sponsor engineer, follows all of the additions and development and rehabilitation programs, the construction budge-s, reviews and engineering practices of the operating company, their [fol. 312] standard designs and specifications, studies and advises on operating methods and costs. The operating sponsor also spends considerable time in the field.

The treasury department hand-s the receipt, deposit and disbursement of funds for the operating companies, the receipt and safe-keeping of securities and assembles and distributes currently information to the operating company on local financial and credit conditions.

The statistical department maintains up to date information on the operating company's physical property and assembles it in standard from for the use of the executive department and for insertion in the governmental and other manuals, including the census department.

The secretarial department maintains a complete historical and corporate record of the operating companies, furnishes certified copies of minutes, records to stockholders, trustees and others.

The accounting department handles the vouchers, checks, disbursements and papers drawn on the bank accounts kept in the financial centers, reconciles bank statements, maintains stockholders lists, handles the payment of dividends, and the withholding of taxes on dividends. The accounting department, through a sponsor accountant, fol- [fol. 313] lows continuously the monthly financial and op-

erating reports of the operating companies, making comparisons of the results, assists in the installation of accounting systems, classifications of accounts, and forms of procedure.

The Budget Department is responsible for the design and operation of the budget system, followed by the operating companies; they study the operating trends, check current results against the budget, and study and advise on the financial aspects of funding and refunding operations and of reorganizations.

The Tax Department supervises all tax accounting, adjustments, and liability of the operating companues, prepares returns, makes reports and claims for abatements and refunds, reports interest on tax free bonds, confers with and attends hearings before governmental authorities on tax assessments, deficiency claims and refunds, and also follows all current tax legislation, both federal and state, and advises the operating companies as to the requirements and procedure under new laws.

The Commercial Department advises the operating companies as to sales methods and policies, sales campaigns, and special efforts for adding new customers. It also fol- [fol. 314] lows the developments in appliances for the additional utilization of gas service, and makes frequent visits to the operating companies properties. The:

Purchasing Department — arranges for quantity purchases of equipment, supplies and appliances, follows: factory production, traffic, routing, checks freight bills and refunds on freight bills and rates, and maintains a purchase exchange, to which all of the operating companies subscribe and turn in their surplus purchases and equipment for same.

The Insurance Department arranges blanket insurance contracts covering group, life, fire, liability, burglary, boiler, machinery, automotive, compensation, and other forms of risk, and also makes field surveys for fire insurance coverage through its staff of insurance engineers, and negotiates with rating bureaus as to classification of premiums, and also handles adjustments, claims and losses under these blanket policies.

* * * * * * *

Q. Mr. Dickerson, have you made studies and computations for the purpose of ascertaining the cost of this service—the cost to Electric Bond and Share Company?

A. I have.

• • • • • • •

[fol. 315] A. The cost to Electric Bond and Share Company of rendering this service is substantially eighty-five per cent of the amount due. A comparison of the cost of this service to United Gas and its subsidiaries is approximately half of what it would cost to engage independent qualified experts in their various lines to render similar service.

• • • • • • •

Q. Well, will you make a comparison between the charges made by your organization and the charges made by other similar organizations?

A. They are substantially less.

Q. And to what extent?

A. From twenty to sixty per cent less.

• • • • • • •

OFFERS IN EVIDENCE

Mr. Coates: The defendant now offers in evidence as Defendant's Exhibit Number 13 the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Dockets Numbers 49 and 63, consisting of:

Book I of the transcribed testimony, being a part of the testimony heard in October, 1932;

[fol. 316] Book II of the transcribed testimony, being the remaining portion of the testimony in this hearing heard in October, 1932.

Book Number I of the Transcript of Testimony, being a portion of the testimony before the Railroad Commission heard in November, 1932;

Book Number II of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932;

Company's Exhibits, as follows; Exhibit No. 1, Exhibit No. 2, Exhibit No. 3, Exhibit No. 4, Exhibit No. 4-A, Exhibit No. 5, Exhibit No. 5-A, Exhibit No. 6, Exhibit No. 7, Exhibit No. 8.

Two instruments both marked Exhibit No. 9, one being partly hand-written and partly typewritten copy of a contract dated December 31, 1929, between the South Texas [fol. 317] Gas Company, a seller, and Compania Mexicana de Gas; and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract between the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932; Exhibit No. 10, Exhibit No. 11.

City of Laredo Exhibits, as follows: Exhibit A, appraisal, Exhibit A(2), Exhibit B, Exhibit C (copy to be furnished by Mr. Lange, attorney for City of Laredo), Exhibit D, Exhibit E, Exhibit F (to be delivered by Mr. Lange, Attorney for City of Laredo), Exhibit G (to be delivered by Mr. Lange, Attorney for City of Laredo), Exhibit H, Exhibit A—Supplemental 1 (Copy to be delivered by Mr. Lange, attorney for [fol. 318] City of Laredo), Exhibit A—Supplemental 2, Exhibit I (map), Exhibit J (map), Exhibit K (map), Exhibit L.

Mr. Coates: Defendant's Exhibit No. 13 is offered in support of the allegations contained in Defendant's Answer in Subdivision "C", being the allegations with respect to defects in the Railroad Commission's order.

* * * * * * *

[fol. 319] DEFENDANT'S EXHIBIT 13

Caption

BEFORE THE RAILROAD COMMISSION OF TEXAS

Gas Utilities Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY, from an Ordinance of the City of Laredo, Texas

Joined and Heard With

Gas Utilities Docket No. 63

In re the Appeal of TEXAS BORDER GAS COMPANY, from the Failure and/or Refusal of the City of Laredo, Texas, to Grant it an Increase in Domestic Gas Rates

Heard October 4 to October 11, 1932—November 9 to November 14, 1932

[fol. 320] The following is from S. F. Vol. A, pp. 359-365, and consists of an excerpt from the record at the Commis-

sion hearing showing the cross-examination of the Company's witness P. M. Biddison. S. F. Vol. A is a part of defendant's Exhibit 13.

[fol. 321] Cross Examination of Company's Witness P. M. Biddison

Questions by Mr. Lange:

Q. Taking into consideration the effect of the present economic and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression?

A. That the distributor and the transmitter share equally in it?

Q. Share equally with the user in bearing the burden of that depression.

* * * * * * *

Commissioner Thompson: The Commission will rule that we cannot, in this case, consider depressed conditions. The case has been presented on present replacement values, and that in itself takes into consideration fully the present price of the commodities that go into this system.

Mr. Lange: That is true.

Commissioner Thompson: And so we are considering today's prices, and present replacement values, and I think that is as far as we would care to go.

Mr. Lange: That is in connection with the physical values, and I am speaking now in connection with the fair rate of return as to what the rate payer is able to pay; we can support that by authority, as I say, and believe the Commission should take it into consideration in arriving at the fair rate of return. Not as to the physical value of the property, but when you get to the point of analyzing the entire record, and reaching a fair rate of return.

[fol. 322] Commissioner Thompson: I know of no way except to take the value of the property, and find out what is a fair return on that, and the law has limited us to 10 per cent; we cannot go beyond that. We can find something reasonable, perhaps, not so high, but that is the rule, and if the commmodity is too high, the business will have to go without customers.

Mr. Bobbitt: If the Commission please, it seems to us there can be no injury done unless it is through an exclusion of this testimony. If we are wrong in our view of the matter, the Commission may disregard the testimony, but if we are right, and the Commission has refused to receive the testimony, then we are denied our right——

Commissioner Thompson: As to the question of considering it, we will have to reserve decision, but as to the question of denying you that right to put it in, we will not do that.

Mr. Coates: We most respectfully insist upon our legal objections to the legal admissibility of the question.

Commissioner Thompson: We will note the objection.

Mr. Coates: May it be understood without the necessity of repeating our objection, that it goes to the entire line of testimony?

[fol. 323] Commissioner Thompson: That will be so understood.

Mr. Lange: Will you read the question to the witness?

"Q. Taking into the consideration the fact of the present economical and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression."

Commissioner Thompson: You are asking that question as a good business policy, or as an expert opinion?

* * * * * * * *

A. I do not think it is equitable to require a utility to accept less than a fair rate of return on the value of its property and business, because its customers may be bearing the burden of a depression, for the reason that the utility will not later be allowed to earn more than a fair rate of return, and recoup the deficiency.

By Mr. Lange:

Q. Whenever that point is reached, that they are finding that they are not making a fair rate of return, if the situation is different the rate making body is at their disposition, isn't it?

A. The rate making body may, at a later date, set a fair rate of return, but the rate making body has no authority,

as I understand it, to ever grant them what would be more than a fair rate of return, and therefore, during any period when their rate of return is less than a fair rate of return, [fol. 324] they have suffered a lack of return which they can never recoup.

[fol. 325] The following is page 1765, S. F. Vol. C. S. F. Vol. C is a part of defendant's Exhibit 13. Said page 1765 is the summary sheet from the Company's reproduction cost appraisal, sponsored by the Company's witness A. D. Greene, and introduced in evidence at the Commission hearing as Company's Exhibit No. 1.

(Here follows one paster, side folio 326)

200A

[fol. 326]

COMPANY'S EXHIBIT 1

South Texas Gas Company and Texas Border Gas Company

Property for Service Within the City of Laredo, Texas

As of August 1, 1932

	Gathering System		Transmission System		Distribution System		Combined Total	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Total Direct Structural Costs Including Land & Rights of Way	$21,048	$17,296	$474,588	$399,215	$544,971	$460,806	$1,040,607	$877,317
Total Direct Structural Costs Excluding Land & Rights of Way	$20,772	$17,020	466,326	390,953	544,721	460,556	1,031,819	868,529
General Construction Expenditures:								
Preliminary & Organization Expense	$717	$717	16,195	16,195	18,593	18,593	35,505	35,505
Engineering & Supervision Expense	1,203	985	27,152	22,764	31,174	26,375	59,529	50,124
Administrative & Legal Expense	811	665	18,327	15,365	21,041	17,801	40,179	33,831
Taxes During Construction	0	0	1,868	1,868	4,389	4,389	6,257	6,257
Interest During Construction	1,167	956	26,315	22,061	30,217	25,564	57,699	48,581
Total General Construction Expenditures	3,898	$3,323	89,857	78,253	105,414	92,722	199,169	174,298
Land & Rights of Way Plus 10%	$304	$304	9,088	9,088	275	275	9,667	9,677
Total—Including General Construction Expenditures	$24,974	$20,647	565,271	478,294	650,410	553,553	1,240,655	1,052,494
Going Concern Value	$3,122	$3,122	70,659	70,659	81,301	81,301	155,082	155,082
Cash Working Capital	342	342	7,744	7,744	16,137	16,137	24,223	24,223
Materials & Supplies in Stock	391	391	2,801	2,801	17,447	17,447	20,639	20,639
Total Valuation	$28,829	$24,502	$646,475	$559,498	$765,295	$668,438	$1,440,599	$1,252,438

[fol. 327] The following is page 2082, S. F. Vol. C. S. F. Vol. C is a part of defendant's Exhibit 13. Said page 2082 is the summary sheet of the operating statement sponsored by Company's witness H. E. Womack and introduced at the Commission hearing (as Company's Exhibit 4).

[fol. 328] COMPANY'S EXHIBIT 4

South Texas Gas Company and Texas Border Gas Company City of Laredo—Operating Statement Twelve Months Ended July 31, 1932

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$122,888.78
Commercial Sales	34,142.37
Industrial Sales	17,979.29
Government and Municipal Sales	2,256.63
Public Utility—For Fuel Sales	15,400.10
Reconnect Charges	1,857.40
Total Operating Revenues	$194,524.57
Operating Expenses:	
Production Expenses	$26,638.70
Transmission Expenses	12,557,80
Distribution Expenses	21,309.93
Utilization Expenses	462.83
Customers Expenses	16,071.76
New Business Expenses	6,790.34
General Expenses	30,069.66
Taxes	13,513.60
Total Operating expenses	$127,414.62
New Operating Revenue	$67,109.95
Allowance for Reserves	55,545.98
New Return on Appraised Value of Property	$11,563.97
Per cent Earned on Appraised Value of Property	0.92%

[fol. 329] The following is from S. F. Vol. A, pp. 663-665. S. F. Vol. A is a part of defendant's Exhibit 13, being the record in the Commission hearing.

[fol. 330] H. E. WOMACK, a witness for the Company, being first duly sworn, testified as follows:

* * * * * * *

Cross-examination.

Questions by Mr. Lange:

* * * * * * * *

Q. Mr. Womack, with reference to some of those figures we asked you to get, that you have not quite gotten together and submitted to us yet, what I want to know was your method of allocating those general office expenses in the Houston office with reference to the general expense item that you have in your exhibit.

A. Practically all of the general expenses that are not specifically to a company but are allocated, are made on the basis of the sum of gross revenues and operating expenses; does that answer you?

Q. That is the proportion that each company's operating expense and income bear to the total?

A. That's it.

Redirect Examination.

Questions by Mr. Coates:

A. Now the apportionment of that general expense between the companies on the basis of the sum of operating [fol. 331] revenues and operating expenses; that is not a method of apportionment which was adopted by you for this case?

A. It is not.

Q. Is it a method of apportionment which has been adopted and put into effect by the managing officials of the company in the exercise of their judgment in the operation of the business?

A. Yes; and I might say this: That was given considerable thought and that was arrived at, that method, as being fair and equitable to each one of the companies, and

that is the method that is used in the Houston office. I might say further that that percentage is corrected each month. The basis of the operating revenues and operating expenses for twelve months immediately preceding the month, is the method used.

Q. Now the portion of the expenses that are apportioned and allocated, as I believe you already stated, are actual out of pocket expenses, aren't they?

A. They are actual operating costs.

[fol. 332] The following consist of pp. 2168, 2171, 2196, 2297 and 2417, S. F. Vol. D. S. F. Vol. D is part of defendant's Exhibit 13. The above numbered pages are the summary and correction sheets from the appraisal, sponsored by the City's witness H. E. Elrod and introduced in evidence at the Commission hearing as City's Exhibits A and A-2.

[fol. 333] EXHIBIT A

General Summary and Allocation

	Cost New		Present Value
Gathering System	14672		11014
Transmission System	558290		392162
Distribution System	583192		478637
Total	1156154		881813
Less Land, Leases & Rights of Way	14809		14809
	1141345		867004
	22565		22565
	1118780	(75½%)	844439
Included with and incorporated in this amount as Expense of Purchase and Storage Deducted on account of being excessive	39320		29687
	1079460		814752
Allocated to Laredo 83.18% (Prorated cost of construction.)	897895	(75½%)	677711

Exhibit A—Continued

	Cost New	Present Value
Preliminary & Organization Exp., 2%	17958	17958
Engineering & Supervision, 2½%	22447	16943
Administration & Legal, 1½%	13468	10166
Taxes during Construction, ½%	4489	4489
Interest during Construction, 3½%	31426	23720
Additional Allowance for Purchase & Storage	10000	7550
83.18% Land, Rights of Way, etc.	12318	12318
83.18% Materials & Supplies	18770	18770
	1028771	789625
Working Cash		11157
Rate Base		800782

[fol. 334] Gathering System

Summary

Acct. No.		Cost of Reproduction New	Cost of Reproduction Less Depreciation
307	Rights-of-way	124	124
310	Field Regulating & Measuring Structures	239	215
311	Other Gathering System Structures	3286	2456
313	Field Lines	7257	5080
314	Field Regulating & Measuring Station Equipment	1967	1634
315	Other Gathering System Equipment		
	A—Drips	444	368
	B—Choke Racks	432	346
	C—Furniture & Fixtures	174	122

Exhibit A—Continued

Acct. No.		Cost of Reproduction New	Cost of Reproduction Less Depreciation
	D—Automotive Equipment	140	78
	E—Tools & Equipment	61	43
	Total, Except Material and Supplies	14124	10466
	Material and Supplies	548	548
	Total—Gathering System	14672	11014

[fol. 335] Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4350	4350
Acct. 318 Rights-of-way	9985	9985
Acct. 320 Transmission Regulating & Measuring Station Structures	2235	1979
Acct. 321 Other Transmission System Structures	19997	13256
Acct. 323 Transmission System Regulating and Measuring Station Equipment	11185	9692
Acct. 324 Transmission Line Equipment	481485	327394
Acct. 325 Other Transmission System Equipment		
A—Farm Taps	104	88
B—Telephone System	21806	19625
C—Miscellaneous	246	209
D—Furniture & Fixtures	1114	640
E—Automotive Equipment	1606	804
F—Tools & Equipment	248	211
Total, Except Material & Supplies	554361	383233
Material & Supplies	3929	3929
Total—Transmission System	558290	392162

Exhibit A—Continued

[fol. 336] Summary

Distribution—Laredo

Property Inside City Limits

	Cost New	Less Depr.
Acct. 326 Land	350	350
Acct. 329 District Regulator & Measuring Station Structures	727	582
Acct. 330 Other Distribution System Structures	1132	898
Acct. 332 Measuring & Regulating Equipment	2780	2297
Acct. 333 Distribution Line Equipment —Intermediate	86281	70196
Low Pressure	293285	243028
Acct. 334 Services		
A—All except Industrial	80986	64789
B—Industrial	8679	6943
Acct. 335 & 336 Meters & Meter Installations (Inside City Limits)	62201	49761
Acct. 337 Service Regulators	608	486
Acct. 338 Other Distribution System Equipment		
A—Industrial Installations	9546	8712
B—Furniture & Fixtures	10285	7824
C—Automotive Equipment	5807	2862
E—Tools & Equipment	2427	1821
Total, Except Material & Supplies	565104	460549
Acct. 338 Other Distribution System Equipment		
D—Material & Supplies	18088	18088
Total — Distribution System — Laredo	583192	478637

[fol. 337] EXHIBIT A-2

City's Exhibit A, Supplement 2

General Summary and Allocation

	Cost New		Present Value
Gathering System	$ 14,672		$ 11,014
Transmission System	558,290		392,162
Distribution System	583,192		478,637
Total	$1,156,154		$881,813
Less:—			
Land, Leases & Rights-of-way	14,809		14,809
Balance	$1,141,345		867,004
Materials & Supplies	22,565		22,565
	$1,118,780	(75½%)	$844,439
Included with and incorporated in this amount as Expense of purchase and storage deducted as being excessive	39,320		29,687
	$1,079,460	(75½%)	$814,752
Add Back Land, Leases & Right-of-way	14,809		14,809
Add for Purchase & Storage	10,000		7,550
	$1,104,269		$837,111
Allocated to Laredo 83.18%	918,531		696,309
Preliminary & Organization Expense 2%	18,371		18,371
Engineering & Supervision 2½%	22,963		17,408
Administration & Legal 1½%	13,778		10,445
Taxes During Construction ½%	4,593		4,593

Exhibit A-2—Continued

	Cost New	Present Value
Interest During Construction 3½%	32,149	24,371
83.18% Materials & Supplies	18,770	18,770
Total	$1,029,155	$790,267
Working Cash		11,157
Rate Base		$801,424
Add		9,274
		$810,698

[fol. 338] The following is from S. F. Vol. B, pp. 1026, 1027, 1120-1129, 1133-1134, 1198-1199. S. F. Vol. B is a part of defendant's Exhibit 13.

[fol. 339] HENRY E. ELROD, a witness for the City, being first duly sworn, testified as follows:

[fol. 340] Questions by Mr. Coates to Test Qualifications of Engineering Witness Elrod:

Q. Mr. Elrod, have you ever been in responsible charge of the construction of a natural gas distribution system?

A. I have not.

Q. Have you ever been connected in any responsible way with the operation of a natural gas distribution system?

A. I have not.

Q. Have you ever been in responsible charge or in a responsible position in connection with preparing plans, specifications and design of a natural gas distribution system?

A. I have not.

Q. Have you ever been in responsible charge of the operation of a natural gas transmission system?

A. I have not.

Q. Have you ever been in responsible charge of the construction of a natural gas transmission system?

A. I have not.

Q. And have you ever prepared or been in responsible charge of preparing the design and the plans and the specifications for a natural gas transmission system?

(Company objects to qualifications of witness; objection overruled.)

* * * * * * *

[fol. 341] Direct examination (resumed).

Question by Mr. Lange:

* * * * * * *

Q. Now, in connection with these items of structural overheads, I will ask you whether you have prepared an exhibit, giving your explanation of those items?

A. Yes.

* * * * * * *

Commissioner Thompson: It will be admitted as Exhibit "B".

Q. That exhibit is not very long, if the Commission please, and if you will permit I will have the witness to just read it into the record.

"In the promotion and construction of nearly every utility plant, certain costs are borne by the owner, which costs, while they have a direct bearing on, and connection with, structural costs, cannot be identified therewith in any physical form. These costs are called "Structural Overheads", generally, they are:

"(1) Preliminary & Organization Expense.

"(2) Engineering & Supervision During Construction.

"(3) Administration & Legal Expense During Construction.

[fol. 342] "(4) Taxes During Construction.

"(5) Interest During Construction.

"Taking the above items in order—

"(1) There is no question but that there were some expenses incurred in the organization of the old Border Gas Company, and in connection with the preliminary work prior to the organization thereof. The matter of preliminary work, however, as relates to the discovery and development

of a gas supply, has been eliminated by stipulation of the parties covering the price of gas to be charged at the mouth of the well. Preliminary and Organization Expense, then, is resolved into the matter of such expenses as were connected only with the organization of the Border Gas Company.

"The History of the situation is, briefly:

"While a well was being drilled for water on the Reiser Brothers' Ranch, East of Laredo, in 1908, gas was encountered and a gas well was successfully completed; subsequently, 'a considerable number of wells, approximately 29, were drilled in the Reiser fields'. What the cost of this development may have been, or the cost of the developmnt of any other field involved in this case, is of no interest here [fol. 343] for, as stated, this phase of preliminary expense has been eliminated from consideration.

"On February 18, 1909, Messrs. Reiser and Johnson, of Laredo, were granted a franchise by the City Council of Laredo to purvey gas within the City of Laredo. What, if anything, was paid for this valuable concession to use the streets and ways of the City, is nowhere disclosed, and in the absence of any proof that anything was, in fact, so paid, no allowance can be made now for same.

"Messrs. Reiser and Johnson, having two years from date of franchise to get gas into Laredo, did not undertake active operations.

"On April 2, 1910, the Border Gas Company, a Louisiana Corporation, was organized with a capital stock of $500,000. Subsequently, and before January 1, 1911, a transmission line was constructed from the Reiser field to Laredo, and the nucleus of a gas distribution system constructed within the City of Laredo. On December 23, 1910, the first gas fire was lighted in a home in the City.

"On January 1, 1911, the Border Gas Company took over the assets and assumed the liabilities of the Trustee for the properties, Mr. M. P. Cullinan.

[fol. 344] "With a developed gas supply 22 miles from the City of Laredo and a franchise to serve gas to the City of Laredo, it is not difficult to visualize the ease with which organization was affected, and in view of the comparatively short interim between the date of the franchise and the time when the properties were completed and in operation, to realize the comparatively small cost of promotion expense and costs of organization.

"Courts and commissions have rather generally allowed as much as 3% of the direct structural cost for preliminary and organization expense. In view of the stipulation referred to, and of the history as related, an allowance of 2% of such costs is believed to be adequate and fair—

"Total Structural Cost	$897,895
"Allowance, at 2%	17,958."

Q. Now, that is the first item that you have under Preliminary and Organization on page 2 of Exhibit 1?

A. Yes.

"(2) Engineering is recognized as a real and necessary charge when properly applied in view of the history of the Companies' properties.

[fol. 345] Beginning with January 1, 1911, when the said properties became an operating entity, the book value of same was $166,996.

"It is reasonable to assume that, prior to January 1, 1911, the construction of the whole of the said properties was accomplished under the direction of an engineer. Subsequent to January 1, 1911, with the exception of two independent engineering reports (one in 1912, which had to do with the gas supply, and the other in 1928, which was a valuation and gas supply report) and up to April 10, 1928, it is believed that all engineering services performed in connection with new construction (extensions) was done by the engineering staff of the Border Gas Company, and charged to Operations, in which event, the cost of such services was taken care of, currently, by the contributions of the rate payers. Such records of the Border Gas Company as have been available fail to disclose that charges for engineering services were made to Capital Account.

"The book cost of the properties of the Company, as of

"July 31, 1932	$1,183,052
"Book Cost—April 10, 1928	1,006,512
"Difference, for Engineering Fee	176,540
Book Cost—January 1, 1911	166,996
"Total cost on which engineering and supervision is chargeable	$343,536

[fol. 346] of 29% of Total Book Cost.

"Since 5% of the total direct structural costs is the usual fee for engineering and supervision, and as that portion of the properties on which a fee is chargeable is 29% of the total properties, the allowance for this item should be 29% of 5% or 1.45% of the total direct structural costs. In view of all of the above, it is thought that a liberal estimate for Engineering and Supervision is 2.5%—

"Total Structural Costs (Depreciated) 677,711
"Engineering & Supervision 2.5% ..... 16,943."

Q. That is the second item reflected on page 2 of Exhibit 1, under Structural Overheads?

A. Yes. "In view of the history of the construction of the properties under consideration as related under previous headings, it is believed that 1.5% of the total direct structural costs of the properties is an adequate allowance for Administration and Legal Expense During Construction—

"Total Structural Costs (Depreciated) 677,711
"Administration and Legal 1.5% ..... 10,166."

Q. That is the third item under Structural Overheads on page 2 of Exhibit 1?

[fol. 347] A. Yes, it is. "It has been shown that the original property of the Border Gas Company was constructed between April 10, 1910, and December 23, 1910. City and County Records do not disclose that any taxes were paid by the Company during the years 1910 and 1911, which was the construction period."

However, on January 31, 1913, the company did pay County Taxes of $8.13 on a value of $800.00 for 20 miles of line; that was in the County. For 1911, or for the year 1911, that was after the original construction period, and in the City the company rendered for 1911, and paid on April 30, 1912, $400.29 on a total valuation of $25,825.00.

Q. In connection with that, if the Commission please, we have the certified copies, and we will introduce certified copies from the Tax Collector's office.

Commissioner Thompson: All right, that will be all right. What he is reading is not in my copy here. You are testifying about the taxes the company paid?

A. Yes.

Mr. Coates: In 1911.

Commissioner Thompson: I do not quite see what that has to do with the reproduction cost new.

[fol. 348] A. Well, the company sets up an amount for taxes during construction.

Commissioner Thompson: That is in the reconstruction of a new plant. What would be considered—I think you can generally assume that taxes are going to have to be paid. In this case they did not pay them, that is what you bring out?

A. It has never been my idea of a reproduction theory that you are entitled to have any expense considered which has not been actually paid. You cannot reproduce anything which has not previously been produced.

Q. For the stenographer's identification we will introduce this.

"The balance of the properties were constructed 'piece meal' and no single element of construction required as much as one year to complete. It is believed that no taxes, whatever, were paid on any items of construction in progress, hence no allowance for Taxes During Construction should be made. In the event, however, that any taxes were paid which were not charged to operations, an arbitrary allowance of 0.5% is being made for this item—

[fol. 349] "Total Structural Costs 897,895
"Taxes During Construction 0.5% ..... 4,489."

Q. That item is the fourth item under Structural Overheads on page 2 of Exhibit 1?

A. Yes. "It is recognized that, regardless of how money is obtained, it has an earning value, and that money tied up during construction, is entitled to earn a fair return. Such a fair return is taken at 7% per annum." By fair return I do not mean the fair return in the sense of a fair return on operating property, but the interest rate that money would bear.

Q. There is a difference in the fair return on money borrowed, and the fair return on an investment?

A. Yes. "Although neither the original construction in 1910, nor any additions made to the Companies' properties since, has required as much time as one year to complete, for the purposes of this case, the period of construction is

taken, arbitrarily, at one year; hence the average time which the Companies were held out of their funds during construction was 6 months—

"Total Construction costs (Depreciated- 677,711
"Interest During Construction 3.5% ..... 23,720."

Q. That item is the fifth item under Structural Overheads on page 2 of Exhibit 1?

[fol. 350] A. Yes.

Questions by Mr. Coates for the purpose of making an objection:

Q. Now, let me ask one or two questions. According to the way I see it, Exhibit "B" is the calculation of the general structural costs, or what are sometimes called general and undistributed overhead costs, contained in Exhibit "A"?

A. Yes.

Q. And Exhibit "A" insofar as direct structural costs is concerned is a reproduction cost new appraisal as of July 31, 1932, is it not?

A. Yes.

(Company objects to Exhibit "B"; objection overruled.)

* * * * * * *

Questions by Mr. Lange:

Q. Your appraisal does not disclose any allowance for going concern value?

A. No sir.

Q. Have you made a study of that item?

A. Yes, I have.

* * * * * * *

Commissioner Thompson: * * * You say there is no going value to this outfit?

By Mr. Elrod:

A. I have found none.

* * * * * * *

[fol. 351] Cross-examination.

Questions by Mr. Coates:

Q. Now, Mr. Elrod, you call Exhibit "A", shown by the title on the cover, "Appraisal". What kind of an appraisal is this?

A. This is a reproduction appraisal.

Q. As of what date?

A. Cost new less depreciation, as of July 31, 1932.

Q. As of July 31, 1932. Now, what is your concept of a reproduction cost new less depreciation appraisal?

A. It is applying to the inventory of materials actually counted or set up, present day prices; that is, to represent the cost new of the then existing properties at the time of the appraisal.

[fol. 352] The two maps following are pp. 2464 and 2476, S. F. Vol. E. S. F. Vol. E is a part of defendant's Exhibit 13. Page 2476 was apparently prepared by the Company and was included in the record which came to the Court of Civil Appeals, Third District, from the District Court of Travis County, being marked Exhibit M.

(Here follow two photos, side folios 353 and 354)

CITY EXHIBIT

HUMBLE-COLE
[KOHLER]

CAROLINA-TEX

LAREDO

4.96 Mi
12"-1925

9.13 Mi.
8"-1910.

PESCADITO

10.49 Mi.
8"-1922.

REISER

ACUILARES 12.5 Mi.
6"-1923

OILTON

MIRANDO

MEXICAN

BRUNI

COLE

MIRANDO CITY

D U V A L

GRANDE

RIO

W E B B

26 Mi.-6"
1916.

AVIATOR

MIRANDO
VALLEY

HENNE-WINCH-FARRISS

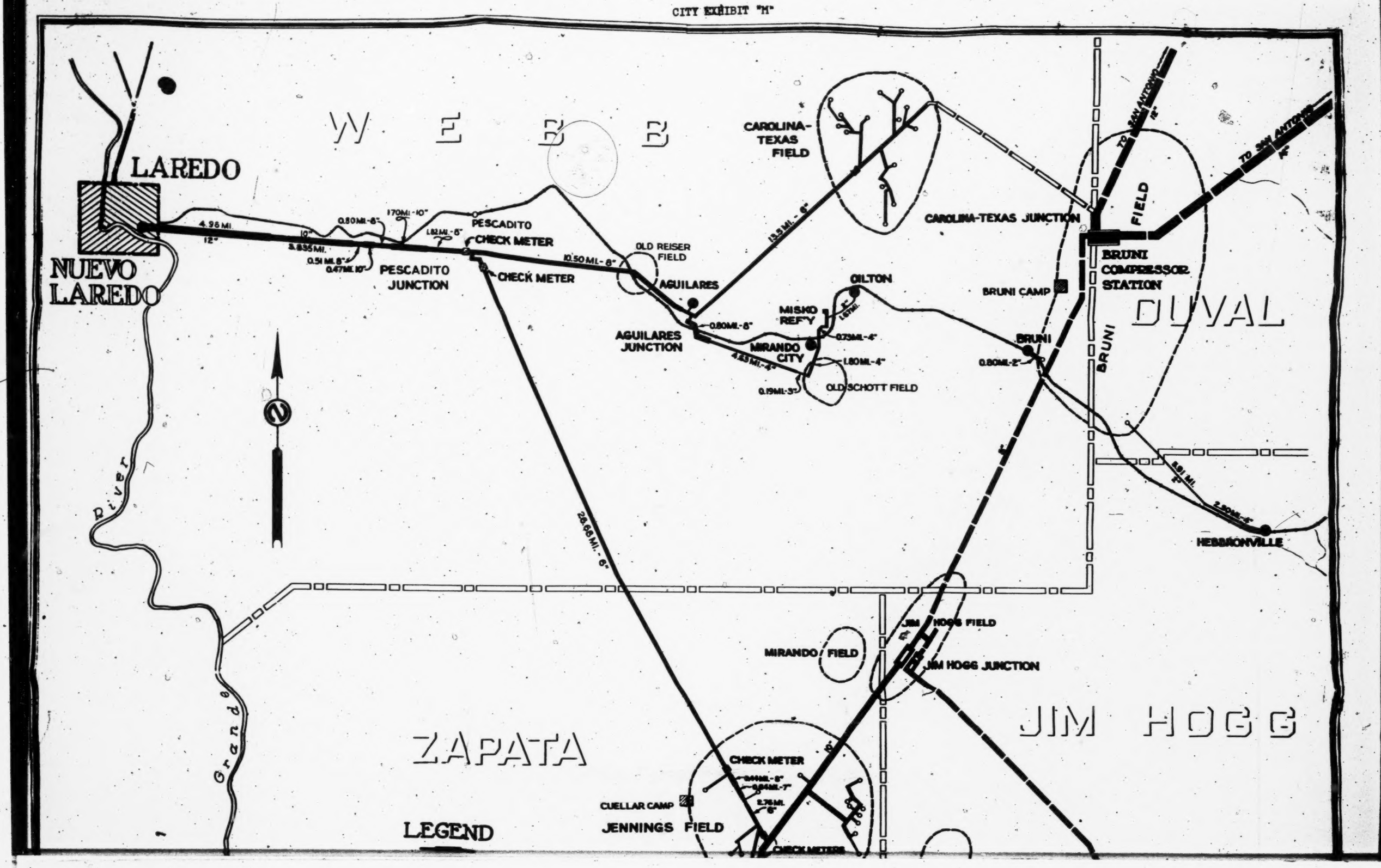
HEBBRONVILLE

Z A P A T A

J I M H O G

MAGNOLIA-JENNINGS

CITY EXHIBIT "H"



[fol. 355] The following consists of pp. 2450 and 2459, S. F. Vol. D. S. F. Vol. D is a part of defendant's Exhibit 13. Said pages are from City's Exhibit L at the Commission hearing, an accounting exhibit sponsored by and introduced in connection with testimony of the City's witness L. O. Lewis.

[fol. 356]

EXHIBIT L—PAGE 1

South Texas Gas Company and Texas Border Gas Company

Consolidated Statements of Earnings

From Operations Within the City Limits of Laredo

For the Years Ended June 30, 1929, 1930, 1931 and July 31, 1932

	Year Ended June 30			Year Ended July 31,
	1929	1930	1931	1932
Operating Revenues				
Gas Sales	$281,320.97	$319,473.23	$254,152.13	$192,349.13*
Forfeited Discounts	7,899.28	8,451.06	7,176.81	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,108.96
Total Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09
Operating Expenses				
Gas Purchases	$56,132.05	$62,233.89	$50,412.75	$22,551.10
Transmission System Operations	4,473.46	8,779.63	4,727.45	3,167.15
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,757.74
Distribution System Operations	17,515.93	19,318.45	13,701.53	11,561.46
Distribution System Maintenance	3,773.79	5,554.47	8,290.11	12,506.66
Customers' Expense	.....	.....	8,618.47	15,367.28
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33
General Office and General Exp	41,520.51	50,577.60	25,117.95	29,884.60
Taxes Other than Income Tax	10,619.67	14,341.39	15,550.53	12,738.30
Other Operating Expense	.....	.....	362.96	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Return Before Provision for Depreciation or Income Tax	$149,452.24	$162,331.42	$129,347.66	$80,308.47

* Includes Forfeited Discount.

[fol. 357]

EXHIBIT L—PAGE 10

South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management Fees	$7,656.27	$11,811.82	$2,220.91	$1,815.56
Loss on Bad Debts	723.30	2,138.14	1,294.80	2,874.47
Advertising	1,283.76	2,591.58	1,495.04	2,054.63
General Office Expense Pro-rated from United Gas Com.	.....	.....	9,399.93	12,389.37
Special Payrolls Prorated from United Gas Company	.....	.....	5,069.25	3,154.26
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,838.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,342.32
General Expense Prorated from United Production Co.	.....	.....	.....	153.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

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[fol. 358] The following is taken from pp. 1493-1495, 1537-1543, and 1579-1580, of S. F. Vol. B. S. F. Vol. B is a part of defendant's Exhibit 13.

[fol. 359] L. O. Lewis, a witness for the City, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

* * * * * * *

Q. Mr. Lewis, in connection with Exhibit "L", or rather appearing in Exhibit "L" at page 10 of the exhibit, South Texas Gas Company and Texas Border Gas Company summary of questionable items contained in the consolidated statement of earnings from operations within the city limits of Laredo for the years ending June 30, 1929, 1930, [fol. 360] 1931 and the year ended July 31, 1932, then on pages 11 and 12, it shows separately South Texas Gas Company from Texas Border Gas Company as to those questionable items. The summary reflected on page 10 is the total of those reflected on pages 11 and 12?

A. That is correct.

Q. Now, how far back from July 31, 1932, does your detailed audit go; does it include the entire period beginning June 31, 1929?

A. No, the detailed audit is not in these statements; you might say it started July 1, 1930. There was some detail back of that, back to February, 1930, but inasmuch as we would not have a complete year there, some of those adjustments were not made.

Commissioner Thompson: Where you say "questionable items" what do you mean by questionable?

A. That is items that I was not sure in my mind as to the support I had for items that I was requested by the City to show separately, that they might be brought to the attention of the Commission.

Commissioner Thompson: You did not know just what to do with them?

A. Well, they are subject to some controversy, apparently.

[fol. 361] Mr. Lange: If the Commission please, we directed the auditor in connection with that particular phase

of the work to prepare for us figures as to a certain character of items, and we are frank to say that whether or not we are able to specifically tie them down, we do not know. We attempted to rivet them down as well as we could, but I do not know whether the record discloses it or not, but the City of Laredo would be unable to bear this financial burden, and we might not be able to bear it all the way through, but we have done the best we could. I do believe that with additional auditing and expense, it would have entailed a considerable expense, but we could have pared out a considerable number of items, but we had to be confined within certain limits which we could not go beyond.

Commissioner Thompson: I noted management fees here, and loss on bad debts and advertising. Do you question those items?

Mr. Lange: Yes sir, we do.

* * * * * * *

Cross-examination of L. O. Lewis.

Questions by Mr. Coates:

Q. Now, in connection with Exhibit "L" you have certain pages in there which you have styled for lack of a better name, questionable items.

[fol. 362] A. That is correct.

Q. Now, is there any doubt in your mind that each item shown under your collection of questionable items was an actual out-of-pocket expenditure, spent where it is shown to be, and expended?

A. There is no doubt in my mind but that the two companies in question actually paid these amounts.

Q And that where a questionable item is shown, as a loss, that it was determined to be a loss after every reasonable ordinary business effort to collect it.

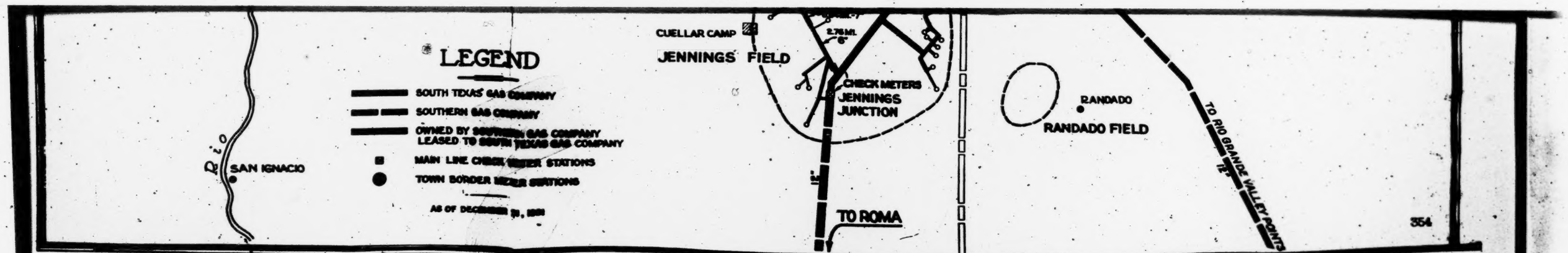
A. You mean in connection with the bad debts?

Q. Yes.

A. The figures I have here are the reserve figures as set up by the company, and from all appearances that reserve is not excessive, and during the year ended July 31, 1932, off items which had their origin in 1929 and 1930, but the figures here are the reserve set up monthly by the company.

* * * * * * *

JENNINGS
MAGNOLIA-JENNINGS
TRANSMISSION LINE
SOUTH TEXAS GAS C
USED AND USEFUL
IN SERVING LAREE
FEB. 28, 1931
353


LEGEND
SOUTH TEXAS GAS COMPANY
SOUTHERN GAS COMPANY
OWNED BY SOUTHERN GAS COMPANY
LEASED TO SOUTH TEXAS GAS COMPANY
MAIN LINE CHECK METER STATIONS
TOWN BORDER METER STATIONS
AS OF DECEMBER 31, 1951
Rio
SAN IGNACIO
CUELLAR CAMP
JENNINGS FIELD
2.75 MI.
CHECK METERS
JENNINGS
JUNCTION
TO ROMA
RANDADO
RANDADO FIELD
TO RIO GRANDE VALLEY POINTS
354

Q. You would not expect all the uncollectibles or bad debts for the period ending July 31, 1932, to be determined as at July 31, 1932, would you?

A. No sir, that would be impossible, because the large per cent of those accounts were not even due at that time.

[fol. 363] Q. I believe you have already stated, or perhaps only suggested that in connection with page 12 of the Exhibit "L" you gave the most careful attention, there, so far as so-called questionable items are concerned, to the year ended July 31, 1932?

A. Well, the last two years of the exhibit.

Q. The last two years of the exhibit?

A. Yes.

Q. And that a good many, if not all, of the same character of items as you have shown for the period ending in 1931, and the period ending in 1932, likewise appears in the period ending in 1929 and 1930, respectively?

A. I will not say that all of them occurred, but during those two years I note that they included in the payroll set up of these two companies, an amount set up which was paid to the United Gas, and I have not attempted to segregate that amount of payroll because I did not make a detailed investigation of the two years. As to the general office expense prorated there has been a change in the classification and manner of handling these items so that now expenses which would formerly have been charged as general payroll are now under the classification of general office prorated.

[fol. 364] Q. Is it your understanding that the United Gas System as now set up is composed of the properties formerly owned by a great many separate corporations?

A. Yes, there were quite a number of separate corporations.

Q. And each such separate corporations generally speaking had its own complete operating organization?

A. I cannot testify, Mr. Coates, to any of the other corporations except these two.

Q. And do the accounts and your investigation of the accounts indicate that an attempt has been made to more or less integrate and unify the operations which are capable of integration and unification?

A. The attempt has been and is being made to get all these companies as nearly as possible into one operating unit.

Q. And where each company may have had its own managing or executive officer before, the attempt has been made

specially in the last two year period, to have one executive handle in his particular capacity as many companies as possible?

A. That has been done, yes.

Q. And where there may have been separate engineers giving their entire time to one company before, an attempt has been made to have the general engineering department [fol. 365] handle as nearly as possible the engineering work for the properties of all the former constituent companies?

A. I suppose that is true, Mr. Coates. Of course I do not know anything about the organization of the United Gas Public Service Company, but I do know that company performs services in the way of engineering, and purchasing, and the general office of that company likewise serves South Texas Gas and Texas Border Gas.

Q. That carries on down to the accounting work of the two companies?

A. Yes, the general books of these two companies are kept in the general office in Houston.

Q. And carries on down, for example, through the insurance department; instead of each company placing its own insurance they group that insurance in one department and pay it out in one lump sum, do they not?

A. I don't know. There are charges for insurance that come from the general office, but I do not know the nature of the protection.

Q. That is likewise true of the new business department; they attempt to let one new business department, insofar as it can, and insofar as a general department can handle that work, do a substantial part of it?

[fol. 366] A. Yes, there are charges for new business expense which comes on the general office. You understand my testimony in connection with United Gas is my reaction to the things I have seen on these two companies.

Q. Do you happen to know whether the salary of the local manager for Texas Border Gas Company; that is, Mr. Stein, is carried on the general office payroll?

A. I do not know where it is carried. It is not on the Texas Border payroll.

Q. And you assume it is carried——

A. I assume he gets paid, yes.

Q. And a part of the legal expense is carried on the general office payroll?

A. Yes.

Commissioner Thompson: I take it from that question and answer that all the management comes from the management company?

Q. Not necessarily, no sir. These operations have been integrated and a great many services are performed by the general engineering department and accounting department, and insurance department, that were formerly performed by the local and separate companies. You could not [fol. 367] transfer all your field operations into the head office. The charges that are made are not fees, but simply allocated expense for such as hire and rent and so forth of those various departments.

Commissioner Thompson: Even the local manager; if he handles half a dozen towns he is prorated?

Q. For instance, Mr. Stein, the local manager here, has his salary carried on the general office payroll, and he handles not only Laredo but these outlying towns. The attempt has been made to have one man not only take care of a local situation but to cover as much territory as possible, and of course Mr. Stein's salary is not charged solely to Laredo, but it is prorated among these various towns.

* * * * * * *

Cross-examination of L. O. Lewis (continued).

Questions by Mr. Coates:

A. Do you want to know the exact figure at which those properties are now carried on the books?

Q. Yes.

A. I believe I can tell you. At July 31, 1932, fixed capital account, which includes the Monterrey line, and all, on the [fol. 368] books of the South Texas Gas Company, amounted to the sum of $2,098,108.96.

Q. That includes all the properties of the South Texas Gas Company?

A. All the properties of the South Texas Gas Company; the Texas Border Gas Company books show a fixed capital account in the amount $677,656.82.

Q. Now, that is the Texas Border Gas Company?

A. Yes.

* * * * * * *

[fol. 369] The following is taken from pp. 1686-1692, 1731-1732, 1734-1737, and 1750-1757 of S. F. Vol. B. S. F. Vol. B is part of Defendant's Exhibit 13. The above numbered pages are from the record showing the testimony and proceedings in the Company's rebuttal testimony at the Commission hearing.

[fol. 370] W. W. STEIN, recalled.

Direct examination.

By Mr. Coates:

Q. State your name.
A. W. W. Stein.
Q. You have already testified in this case?
A. Yes.

* * * * * * *

Q. Give a brief resume of the number of fields, giving the dates as near as you can, to which lines have been extended over the history of this company to take gas.

* * * * * * *

[fol. 371] A. In 1910 the Border Gas Company built a line from the Reiser Field about 22 miles east of Laredo into Laredo, an 8 inch line. In 1916 this field was becoming depleted, and gas was discovered in the Jennings Field. A line was then extended from what is known as Pescadito Junction to the Jennings Field. That continued to supply Laredo until shortly after 1921, when gas was found in the Mirando Valley Field.

Q. That is designated on the map as the Mirando Field?
A. Yes.

Q. And is some 10 or 12 miles northeast of the Jennings Junction?

A. Yes. The line was then extended, a 4 inch line, about 7 miles long, was extended from this 6 inch line into this field.

Q. From the Jennings Pescadito line into the Mirando Field?

A. That is right.

Q. All right, go ahead.

A. And gas was shortly afterwards discovered in the Schott Field, which is about one mile and a half south of what is now Mirando City.

Q. Now, did the Mirando Field become depleted?

A. This field became depleted about a year after the line was laid.

[fol. 372] Q. Did the Schott Field become depleted?

A. Yes, the Schott Field was discovered, and the Carolina-Tex Field was also discovered, but this line between Pescadito Junction and Aguilares, originally laid in 1910, was removed when the Pescadito-Jennings line was laid. After the Schott Field was discovered, and a number of wells were producing, a line was extended from Pescadito Junction to the old Reiser Field to Aguilares, and extended to the Schott Field in order to bring gas from the Schott Field into Laredo. In 1923, the Carolina-Tex Field was discovered, or, at least, at this time another extension was made from Aguilares into the Carolina-Tex Field, and in each case the extension was made in order to get a larger supply of gas for Laredo, or to replenish the depleted supply of the other fields.

The four inch line between the Jennings and Pescadito Junction was taken up because the Mirando Field had become depleted. The Schott Field lasted only a short time, and later this gathering line was used to carry gas into the field, and supply the Misko Refinery at Mirando City.

Q. Let me see if this is a correct summary of your testi-

[fol. 373] mony: That the first line extended was to the old Reiser Field?

A. That is right.

Q. Which was between Pescadito and Aguilares, and that that Reiser Field became depleted about 1916?

A. That's right.

Q. And the line was then extended from Pescadito to the Jennings Field?

A. That's right.

Q. And that was in 1916?

A. Yes.

Q. Then the line was extended to the Mirando Field, and when was that?

A. In 1922, I believe.

Q. Now, in the meantime the line from Pescadito to Reiser had been taken up; is that right?

A. That's right.

Q. Then when the Schott Field came in, and the line was made from Pescadito through Aguilares to and by Mirando City into the Schott Field?

A. Mirando City became built at that time, and the line came a mile south of the City into the field as a gathering line.

[fol. 374] Q. And in 1923 the Carolina-Tex Field came in, and the line was extended from Aguilares to a point in the Carolina-Tex Field?

A. That's right.

Q. Do you know any other tie-ins that have been made in the past five years for the purpose of supplying Laredo with an adequate supply of gas?

A. There was a tie-in made in 1929 between the line that was built to Monterrey and the Jim Hogg Field.

Q. Was the Monterrey line built in 1929?

A. I believe that is the year. That is my recollection of it.

* * * * * * *

Q. What was the size of the first tie-in, and if it was changed, when was it changed?

* * * * * * *

A. There was a tie-in made between the four inch line and ten inch line between Jim Hogg and Jennings Junction.

Q. And was the size of that tie-in later increased?

A. Yes.

Q. To what size line?

A. I never have seen that line.

[fol. 375] Q. Was it larger than a four inch?

A. It was larger than a four inch.

Q. Were any other tie-ins made?

A. A tie-in was made to the Carolina-Tex Field between the Southern line and the Bruni Field. This line was laid by a gathering line to take gas out of the Carolina-Tex Field into San Antonio. We made the tie-in at the northeast part of the Carolina-Tex Field at this point (indicating on map), and a tie-in and a meter station was installed at the Junction of this 8 inch line between the Carolina-Tex Field and the main line to San Antonio.

Q. Now, was that tie-in made, or do you know whether that tie-in was made for the purpose of bringing gas around to be taken to San Antonio, or for the purpose of giving an additional emergency supply to Laredo?

A. It was made primarily for the purpose of an additional emergency supply to Laredo.

Q. Why was the tie-in made down at Jennings Junction?

A. In order to provide or to bring the gas from the east Jennings Field into this 6 inch line that leads from the Jennings Field to Pescadito Junction.

Q. You were continuously connected with the Laredo properties here until about when?

[fol. 376] A. Until January 1, 1931.

Q. And at that time you were transferred by the Company over to Mississippi, were you not?

A. That's right.

Q. And came back here when?

A. In June, 1932.

Q. Now, at the time you left Laredo to go to Mississippi, from what line was the City of Laredo obtaining its gas?

A. It was obtaining its gas from this 6 inch line.

Q. You are now designating the Jennings-Pescadito line?

A. Yes, and the wells in the Jennings Field. It was also obtaining gas from the Carolina-Tex Field.

Q. During your time with the Texas Border Gas Company, and prior to the time you left Laredo to go to Mississippi, did you ever have occasion to get gas for the supply of the City of Laredo from what we have designated here as the east Jennings Field?

A. Yes, shortly after the line was completed we had several occasions the same winter to take gas from this east Jennings Field.

Mr. Lange: What winter was that, Mr. Stein?

A. The winter of 1929 and 1930.

[fol. 377] Q. That was before this rate case was ever heard of, wasn't it?

A. That's right.

* * * * * * *

Testimony of A. D. Greene, recalled.

Questions by Commissioner Thompson:

Commissioner Thompson: I do have one question. It has been developed by this testimony which you have heard

that this line down to Jennings Field was used only one or two times last winter; now, as an engineer and operating man, and I guess you are both, do you think that is good practice to have a line that costs that much money for occasional use once or twice a year?

* * * * * * *

A. Up until January 1, 1931, that line was in constant use. During the year ending with July, 1932, the sales of gas in Laredo and elsewhere were very moderate, and it was not necessary for us to rely on that line. However, we are providing to put that line into condition to use it continuously to serve Laredo in the future.

Commissioner Thompson: The point I was trying to develop was how seldom the line can be used and still be [fol. 378] considered useful and necessary, in your opinion, to keep the town from running out of gas. Now, would once a year be sufficient to justify it, or five times, or ten?

A. Of course, because it occurred only once last year I do not believe is a very good basis to estimate that on, but I think it is reasonable to have a guarantee of your gas supply into any city.

Commissioner Thompson: Have you had the experience of operating in cities where the gas ran out on cold days?

A. I have had that misfortune, yes.

Commissioner Thompson: How do the people like that?

A. They don't like it.

Testimony of M. A. Abernathy.

Direct examination.

By Mr. Coates:

Q. State your name and initials for the record.

A. M. A. Abernathy.

Q. By whom are you employed now?

A. United Gas Public Service Company.

[fol. 379] Q. In what capacity?

A. General superintendent of the transmission lines.

Q. Mr. Abernathy, you have some considerable knowledge of the gathering line contract between South Texas

Gas Company and Southern Gas Company in the Carolina-Texas Field, have you not?

A. Yes.

Q. And can you state very briefly what the situation was in the field that led to the making of that contract?

A. The situation at that time was that the South Texas Gas Company had a very small amount of production, or, rather, production from the wells which it controlled, and it needed some additional gas, and gas was available from wells controlled by the Southern Gas.

Q. And do you know what the situation was with reference to the well pressures, and so forth, on the wells of those two companies in the field prior to the time this contract was made?

A. The pressures on those wells were declining at that time.

Q. Now, you heard the testimony of Mr. Stein, did you not?

A. Yes.

Q. Does that conform with your knowledge and understanding of the transaction?

[fol. 380] A. Yes.

Q. And, in your judgment, is the contract that was made between South Texas and the Southern for the gathering line charge, is that a good contract for South Texas?

A. I think it is, yes.

Q. Is it the kind of contract that you would have made if you had been representing the South Texas Gas Company, and there had been no connection between you and the Southern Gas Company?

A. I believe it is.

Q. And would you likewise like to have some more contracts of that sort?

A. I can think of many cases where contracts of that character would be advantageous to the company.

Q. Why?

A. Because I think, in my opinion, the gathering charge set up in that contract in many cases would be less than the actual cost of the company in constructing lines, and removing them as wells become depleted, and making the necessary changes in the system.

Commissioner Thompson: In the long run that would benefit the gas users and rate payers?

[fol. 381] A. Yes.

Commissioner Thompson: Because less would have to be spent, and charged to them?

A. Yes.

By Mr. Coates:

Q. Mr. Abernathy, during the year 1932 was there any blowup or breakdown in the transmission line between Pescadito Junction and Carolina-Texas Field?

A. Yes.

Q. Was that a complete break, or did that result in a complete stoppage of gas from Carolina-Texas Field into Laredo?

A. Yes sir.

Q. Do you recall on what day that was?

A. That was on March 13th.

Q. That was a spring month, but do you know how the weather was about that time?

A. Pretty cold.

Q. Do you know whether that was one of the coldest days of the entire 12 months period?

A. It was not the coldest day, but it was one of the coldest.

* * * * * * *

[fol. 382] Q. In that connection, do you know from what source the city of Laredo received its gas at that time?

A. It got gas through the line from Jennings-Pescadito, and received part of its supply from the gas from the Bruni Field through the Jim Hogg 10 inch line, and the east Jennings gathering system.

Q. And but for those sources upon which the company could rely at that time would either all or a substantial part of the gas users in Laredo have been without gas?

A. A substantial part would have been, yes.

* * * * * * *

Testimony of Mr. Womack, recalled.

Questions by Mr. Coates:

Q. You are the same H. E. Womack that has heretofore testified in this case?

A. Yes.

Q. Mr. Womack, have you prepared an operating statement of Texas Border Gas Company and South Texas Gas Company showing operation for inside the City of Laredo only, for the period ending October, 1932?

A. For the 12 months period ending October, 1932, yes.

Q. Have you got that in the form of an exhibit?

[fol. 383] A. Yes, I have.

Q. And was that statement prepared in exactly the same manner, using exactly the same bases of allocations and all other bases as the exhibit you have heretofore introduced in this case covering the 12 months ended in July?

A. That is correct.

Q. Except that you used the 12 months ending October 1932?

A. Yes, the same methods of allocation were used.

Q. Now, Mr. Womack, in anticipation of the hearing in this case which was to come off in June of this year, did you prepare an accounting exhibit for the 12 months ended March, 1932?

A. Yes.

Q. And in substantially the same form and manner as the exhibit heretofore introduced?

A. Yes sir.

Q. And the accounting exhibits prepared for those three 12 months periods will cover what entire spread of operations in months?

A. About 19 months, I believe.

Mr. Lange: Now, if the Commission please, at the time [fol. 384] the City of Laredo made its supplementary audit, the period ending with July 31, 1932, was the final period, as we understood it.

Mr. Coates: That was by reason of the postponement in the case. You have gone back to 1910 to show a trend, but in order to show something broader than a 12 months' trend we offer these exhibits.

Mr. Lange: There could be a broader trend by taking 2 or 4 years prior to that time.

Mr. Coates: But the materiality of these things, it seems to me, is in proportion to the closeness of the date of hearing, or as close as you could get to the date of the hearing.

Commissioner Thompson: We will admit them. We are anxious to see what is going on.

Mr. Lange: That is true, but at the time the City made its last audit, as of that time, we would not have had the opportunity to come right on down to date.

Mr. Coates: Yes, you could.

Mr. Lange: This is the position. The hearing date was agreed upon as the first Monday in October, and at that time we were to complete our auditing period; we did first want to run it down through June 1931, in order to make it [fol. 385] an auditing period, and we took it up, and Mr. Coates said it should be some closer month, and we fixed on July 31st as the final month.

Commissioner Thompson: And you both agreed on that date?

Mr. Lange: Yes, and all the figures are based on that date.

Mr. Coates: The request was made as to what would be the last date in 1932 for which complete accounting data would be available for examination by the city's auditors in order to present an accounting exhibit for the hearing in October.

Mr. Lange: Yes, that's right.

Mr. Coates: And we told you July, and set up our main accounting exhibit as of that time.

Mr. Bobbitt: And at your suggestion we have completed our audit as at that date.

Mr. Coates: On our statement that that would be the last month for which full accounting data would be available?

Mr. Bobbitt: That is right.

Mr. Coates: And subsequent to that time, at the request [fol. 386] of the city, that hearing was postponed for more than a month, and during that intervening period your accountant was on our books in Houston, and there was there for him anything that he wanted to get. As a matter of fact, Mr. Bobbitt——

Mr. Bobbitt: He was working on the audit back to July 31, 1932.

Mr. Coates: He was there to work on anything he wanted to.

Mr. Lange: I believe, Mr. Coates, you will find that the agreement was this: At the time we took up the matter with you with reference to the accounting period we first suggested June 30, 1932, as the final month, and it was your

contention that it should be closer to the date of the hearing.

Mr. Coates: That is right.

Mr. Lange: And we said the hearing would probably be the latter part of September.

Mr. Coates: Yes sir.

Mr. Lange: And it was only the week following on October 4th, and on that basis we took July 31st, and the hearing date commenced only a week later from the time when we took the July 31st accounting period.

[fol. 387] Mr. Coates: Yes sir, that's right.

Mr. Lange: And there was no postponement beyond that time. The end of September for the date of the hearing was the one we had in mind at the time.

Mr. Coates: And that was the one we had in mind, and the one we presented at this hearing.

Mr. Lange: It was not postponed, was it?

Mr. Coates: After we heard them here for a week, and after Mr. Neff had been on the stand awhile, the hearing was postponed at the request of the City.

Mr. Bobbitt: It was reset for 10 days, and upon Mr. Coates suggestion of the 9th of November we agreed on that date. The agreed period of July 31st is fair to both parties; and the Commission can understand that these gentlemen have complete charge of the records, and have a complete accounting staff working all the time, and it is not fair to us to change that.

Commissioner Thompson: It would not make a material difference, would it?

Mr. Coates: Yes sir, there is a distinct downward trend.

Commissioner Thompson: Yes, but each successive 12 months period shows a downward trend. I think perhaps [fol. 388] it would work a hardship on the City to offer it.

Mr. Coates: All right, then we will not offer it. How about this period ending in March, 1932; do you object to that?

Mr. Lange: No, but I would like to see the exhibit, is all.

Mr. Bobbitt: Isn't that a duplication; don't we have it in up to March 31st?

Commissioner Thompson: Yes, I believe so.

Mr. Bobbitt: Then why go back to March and start over again?

Mr. Coates: Then if that is the desire of the Commission we will accede to your wishes.

Commissioner Thompson: Thank you very much. It is our desire.

Mr. Coates: All right, sir.

Commissioner Thompson: I think I have never seen a case where it was brought so nearly to the date of hearing, anyhow. It has been brought up to within about 30 days of the time we started.

Mr. Coates: Yes sir, that is correct. Now, the record will show that we offered to introduce in evidence the exhibit for the period ended the 12 months, ended October, 1932, and [fol. 389] that the City objected, and that the Commission stated, in view of that objection, and in fairness to all parties, and in view of the fact the city accountants had not audited this period, that the Commissioner thought it would be better not to introduce it in evidence.

Commissioner Thompson: That is right.

Mr. Lange: We also want the record to reflect the fact, Mr. Coates, that the City in bringing the audit down through July 31, 1932, did it with the understanding had with counsel of the gas company at the time, that that was the nearest accounting period prior to the date of the hearing, which would be the latter part of September, as it was then understood, and that the hearing did actually commence a few days later.

Mr. Coates: Yes, that is right.

Commissioner Thompson: All right, if that is all with the witness, we will excuse Mr. Womack.

(Witness excused.)

Mr. Coates: The petitioners in this case rest their rebuttal testimony.

Mr. Lange: The City of Laredo has no further testimony. [fol. 390] Mr. Coates: At this time we want to renew in the form of a motion, a prayer which is already contained in the petition, namely, and that prayer covers two things: First, that the findings of the Commission be separate findings on each separate principal item of property in issue in this case; and second, that the Commission proceed something along the lines of a Federal master in equity, and also along the lines that the Interstate Commerce Commission proceeds; that is, file what the Interstate Commerce Commission calls a proposed report, and give each party a reasonable time to prepare its exceptions to it, and after that then prepare its final opinion and decision.

Mr. Bobbitt: You do not attempt to invade the province of the Commission?

Mr. Coates: No, but I have had a good deal of experience with that character of procedure, and we make that in the form of a motion for whatever it might be worth. It has been the past procedure in gas cases, and has worked out very well. No, we are not attempting to invade the province of the Commission.

* * * * * * *

[fol. 391] This concludes the transcript taken from defendant's Exhibit 13.

[fol. 392] Plaintiffs' Rebuttal Testimony

[fol. 393] Leon O. Lewis, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. My name is Leon O. Lewis, Jr.
Q. Where do you reside, Mr. Lewis?
A. San Antonio.
Q. What is your occupation?
A. I am a Public Accountant.
Q. I will ask you whether you are a Certified Public Accountant.
A. Yes, sir, I am a Certified Public Accountant.
Q. Do you have a certificate in this State—issued in this State?
A. Yes, sir.
Q. How long have you had that certificate?
A. Since July, 1927.
Q. July, 1927?
A. Yes, sir.
Q. What degree, if any, do you have, and from what school?
A. I am a graduate of the University of Texas, and have a Bachelor of Business Administration degree.
[fol. 394] Q. Is that the degree issued by the University School of Business Administration at Austin, Texas?
A. Yes, sir.

* * * * * * *

Mr. Lange: We desire at this time to introduce this exhibit in evidence as Plaintiff's Exhibit No. 4.

* * * * * * *

(Thereupon the document above referred to was marked Plaintiffs' Exhibit No. 4.)

Q. Mr. Lewis, turning to page 2 of the exhibit, what does the heading on page 2 recite?

A. The title?

Q. Yes.

A. The Border Gas Company, Texas Border Gas Company, and South Texas Gas Company, Historical Cost of Fixed Capital as Shown by Books.

Q. Now, Mr. Lewis——

A. And there is an asterisk referring to a foot-note there that the additions identified as pertaining to the transmission line from Jennings to Roma haye been eliminated in making this study.

[fol. 395] The following are pages 1771 and 1772 from S. F. Vol. III.

[fol. 396] PLAINTIFF'S EXHIBIT No. 4

Page 1

United Gas Public Service Company

Historical Cost of Fixed Capital

Old South Texas Gas Company and Texas Border Gas Company Systems, Excluding Jennings to Roma Transmission System Property

Historical Cost Per Books:		
Historical Cost of Fixed Capital Transferred From South Texas Gas Company and Texas Border Gas Company, October 21, 1932		$1,049,735.38
Additions: October 21, 1932 to December 31, 1932:		
General Property		1,400.68
Transmission System Property:		
Enlarge Portion Main Line Kennings to Pescadito Jct	$14,387.45	
Recondition 6" and 8" Lines Laredo Area	87,709.47	
		102,096.92
Balance—December 31, 1932		$1,153,232.98
Year Ended December 31, 1933:		
Additions	$3,747.14	
Retirements	4,986.47	
Net Retirements		1,239.33
Historical Cost of Properties December 31, 1933		$1,151,993.65

Plaintiff's Exhibit No. 4—Continued

Retirement Reserves:		
Accrued Book Reserves on Properties Transferred 10–21–32		$499,707.47
Add: Provision for Period—October 21, 1932, to December 31, 1933 Computed at 3%		41,295.97
		$541,003.44
Less:		
Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Balance Accumulated Reserve December 31, 1933		$508,498.15
Retirement Reserves Adjusted to 3%:		
Adjusted Reserve at July 31, 1932		$126,559.13
Add: Provision for Depreciation for Period from October 21, 1932, to December 31, 1932		41,295.97
		$167,855.10
Less: Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Reserve—December 31, 1933—Adjusted to 3%		$135,349.81

(Here follows one paster, side folio 397)

[fol. 397]

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Plaintiff's Ex. No. 4—Continued

Page 2

Border Gas Company, Texas Border Gas Company & South Texas Gas Company

Historical Cost of Fixed Capital as Shown by Books*

Year	Historical Cost Per Books: Additions	Retirements	Net Additions	Accumulated Additions	Depreciation Per Books: Provision for Depreciation Charged To Operations	Less Charged To Reserve	Less Retirement Expense Charged To Operations	Accumulated Depreciation Per Company Books	Adjusted Depreciation: Depreciation at 3%	Accumulated Depreciation at 3%
Border Gas Company:										
1910 Construction	$166,996.68	.....	$166,996.68	$166,996.68	.....	.....	.....	.....	.....	.....
1911 1- 1-11 to 12-31-11	29,241.36	$646.09	28,595.27	195,591.95	.....	.....	.....	.....	$5,438.83	$5,438.83
1912 1- 1-12 to 6-30-12	14,620.68	323.04	14,297.64	209,889.59	.....	.....	.....	.....	3,041.11	8,479.94
1913 6-30-12 to 6-30-13	13,003.21	174.09	12,829.12	222,718.71	.....	.....	.....	.....	6,489.13	14,969.07
1914 6-30-13 to 6-30-14	7,735.79	54.86	7,680.93	230,399.64	.....	.....	.....	.....	6,796.77	21,765.84
1915 6-30-14 to 6-30-15	5,737.40	1,825.71	3,911.69	234,311.33	$82,230.48	.....	$1,664.04	$80,566.44	6,970.68	27,072.48
1916 6-30-15 to 6-20-16	122,532.92	11,134.27	111,398.65	345,709.98	.....	.....	8,731.52	71,834.92	8,700.32	27,041.28
1917 6-30-16 to 6-30-17	7,083.12	23,077.29	15,994.17(R)	329,715.81	.....	.....	19,318.90	52,516.02	10,131.39	17,853.77
1918 6-30-17 to 6-30-18	15,069.85	5,069.23	10,000.62	339,716.43	24,363.76	.....	1,707.79	75,171.99	10,041.48	26,187.46
1919 6-30-18 to 6-30-19	14,643.45	.....	14,643.45	354,359.88	36,380.98	.....	797.99	110,754.98	10,411.14	35,800.61
1919 6-30-19 to 12-31-19	10,579.25	.....	10,579.25	364,939.13	18,833.44	.....	1,718.91	127,869.51	5,394.74	39,476.44
1920 1- 1-20 to 12-31-20	17,160.54	.....	17,160.54	382,099.67	33,869.06	$483.44	182.99	161,072.14	11,205.58	50,015.59
1921 1- 1-21 to 12-31-21	12,452.82	.....	12,452.82	394,552.49	32,319.67	2,168.77	1,727.84	189,495.20	11,649.78	57,768.76
1922 1- 1-22 to 12-31-22	179,713.71	.....	179,713.71	574,266.20	40,326.61	873.02	653.22	228,295.57	14,532.28	70,774.80
1923 1- 1-23 to 12-31-23	141,584.26	13,085.96	128,498.30	702,764.50	52,921.93	7,718.91	8,870.93	264,627.66	19,155.46	73,340.42
1924 1- 1-24 to 12-31-24	73,489.21	.....	73,489.21	776,253.71	61,341.64	5,712.71	1,191.53	319,065.06	22,185.28	88,621.46
1925 1- 1-25 to 12-31-25	131,192.98	.....	131,192.98	907,446.69	69,856.79	3,700.11	3,561.41	381,660.33	25,255.50	106,615.44
1926 1- 1-26 to 12-31-26	56,161.43	.....	56,161.43	963,608.12	77,644.23	673.13	537.05	458,094.38	28,065.82	133,471.08
1927 1- 1-27 to 12-31-27	34,307.27	9,056.79	25,250.48	988,858.60	81,514.07	21,589.20	1,108.09	516,911.16	29,287.00	140,060.79
1928 1- 1-28 to 4-10-28	26,366.02	8,712.49	17,653.53	1,006,512.13	23,001.68	8,471.63	85.50	531,355.71	8,314.05	139,817.71
Total Book Cost of Properties Transferred to South Texas Gas Company	$1,079,671.95	$73,159.82	$1,006,512.13	$1,006,512.13	$634,604.34	$51,390.92	$51,857.71	$531,555.71	$243,066.34	$139,817.71
South Texas Gas Company (S) & Texas Border Gas Company (T)										
1928 4-10-28 to 12-31-28 (S)	$15,287.70	3,157.12	12,130.58)		15,414.40	1,284.00)				
(T)	31,592.93	7,423.89	24,169.04)	$1,042,811.75	8,408.95	5,090.25)	$.....	$548,804.81	$22,183.92	$155,627.38
1929 1- 1-29 to 12-31-29 (S)	4,429.94	3,774.02	655.92)		21,558.83	158.32)				
(T)	21,044.84	8,320.71	12,724.13)	1,056,191.80	11,947.44	1,205.43)	.....	580,947.33	31,485.05	185,748.68
1930 1- 1-30 to 2-28-30 (S)	8,707.60	.....	8,707.60)		3,793.33	.....)				
(T)	3,275.69	643.50	2,632.19)	1,067,531.59	2,046.39	.....)	.....	586,787.05	5,309.31	191,057.99
1930 3- 1-30 to 6-30-30 (S)	3,870.57	.....	3,870.57)		6,551.26	.....)				
(T)	7,374.03	205.21	7,168.82)	1,078,570.98	3,319.67	.....)	.....	596,657.98	5,430.51	196,488.50
1931 7- 1-30 to 6-31-31 (S)	35,147.77	15,858.80	19,288.97)		11,999.60	269.90)				
(T)	28,394.51	4,183.04	24,211.47)	1,122,071.42	4,715.78	1,501.63)	.....	611,601.83	33,009.64	227,726.61
1932 7- 1-31 to 7-31-32 (S)	12,931.70	133,555.68	120,623.98)**(R)		8,877.21	132,886.70)				
(T)	40,092.11	1,100.86	38,991.25)	1,040,438.69	19,538.10	2,319.72)	.....	504,810.72	36,799.86	129,320.05
1932 8- 1-32 to 10-21-32 (S)	13,728.01	6,469.67	7,258.34)		1,227.41	6,143.17)				
(T)	5,229.80	3,191.45	2,038.35)	1,049,735.38	4,058.93	4,246.42)	.....	499,707.47	7,628.67	126,559.13
Total Book Cost of Properties Transferred to United Gas Public Service Company	$1,310,779.15	$261,043.77	$1,049,735.38	$1,049,735.38	$758,061.64	$206,496.46	$51,857.71	$499,707.47	$384,913.30	$126,559.13

* Note.—Additions Identified as Pertaining to Transmission Line from Jennings to Roma Eliminated.

** Note.—Transmission Lines Retired, New Lines not yet Charged into Capital Account, Depreciation Computed on Full Beginning Balance. The Adjusted Computations for Depreciation are Inaccurate to the Extent that Land, Organization Costs, and Rights of Way are Included in the Computation.

• • • • • • •

[fol. 398] Q. Mr. Lewis, proceeding further on page 2, the exhibit reflects the heading South Texas Gas Company and Texas Border Gas Company, beginning with the period of April 10, 1928, to December 31, 1928; and under the general heading of Historical Cost per Books, explain the columns as they appear. The first column is Additions, and the next is Retirements, and then the third reads Net Additions, and the fourth Accumulated Additions. Is that the three studies in that——

A. In the first column of Additions you will note in this section there are two lines for each period, one of them has the letter "S" and the other the letter "T"; those on the line with the letter "S" are additions and retirements to the South Texas Gas Company, and those indicated by the letter "T" are the additions and retirements to the Texas Border Gas Company. In the first column I have shown the additions to the fixed capital account, as per the books of the Company, and in the second column the retirements——

Q. New——

A. —or the deductions from the fixed capital account, as per the books of the company.

[fol. 399] Q. Just explain what you mean by the fixed capital account?

A. Fixed capital account is the title of the account shown on the company's books on which are entered the costs of all property additions and items termed, in accounting practice, as capital expenditures or expenditures for the plant or equipment, or organization expenses and items of that nature which are not normally charged to operating expenses.

Q. Capital accounts as distinguished from the operations of the company?

A. Yes.

Q. Now, the next column, headed retirements; what does that represent?

A. That is the retirements of fixed properties, as shown by the books of the company, for the periods indicated, or the reductions in fixed capital.

Q. And the next column, Net Additions; explain that.

A. That is just a net figure; the net figure between additions and retirements for any period.

Q. What is that figure there of $1,042,811.75; what does that represent?

A. That is the accumulated additions down to the last date; in other words, taking the balance at the end or at the beginning of the year, and adding on the net additions [fol. 400] for the year, we get the balance for the close of the period.

Q. In the succeeding columns, headed Depreciation as Per Books, in the first of which is the provision for depreciation charged to operations; explain that.

A. The items in that column are the charges to operating accounts or depreciation account for the depreciation for that particular period, and they have been charged to operations and set up in a depreciation reserve. The figures shown in that column as provision for depreciation charged to operations, are the actual provisions made on the company books, except that I have adjusted those figures for the Roma-Jennings property that I eliminated from the fixed capital side.

Q. Then proceeding under the next heading, less charges to reserve, what does that represent?

A. That represents charges against this reserve for losses the company has in retirements.

Q. The column headed accumulated depreciation per company books; what does that represent?

A. That represents the balance of the reserve after deducting from the accumulated reserve the charges for retirements, but in this case deducting an additional amount for retirement expense charged to operating accounts.

[fol. 401] Q. And that item is the depreciation accumulated as it appeared on the company's books for that period?

A. At the end of the period shown.

Q. And the two succeeding columns, adjusted depreciation; are those computations that you have made?

A. Yes.

(Defendant objects; objection overruled.)

* * * * * * *

Q. And you stated the items reflected under those two columns are adjustments by you, computing it at a rate of depreciation for the accumulation set up, of three percent—of such a rate of three percent had been applied?

The Court: I did not understand they were adjustments, but were calculations.

Q. That is correct.

Mr. Coates: Are they calculations or adjustments?

A. They are calculations, designed to show what the provision for reserve would be had the rate of three percent been used.

Q. Referring further to page 2, the bottom of the page, "Total Book Cost of Properties Transferred to United Gas Public Service Company". Where is that total reflected?

A. The total book cost of properties transferred to United Gas Public Service Company is $1,049,735.38 at October 21, [fol. 402] 1932.

Q. $1,049,735.38; and referring further as to the depreciation as per the books, what does the figure of $758,061.64 reflect?

A. The figure of $758,061.64 represents the total provision for reserve set up on the company's books for the periods indicated, eliminating the reserve applicable to those lines from Roma to Jennings.

Q. And the column, accumulated depreciation as per the company books, of $499,707.47?

A. That is the balance of the depreciation reserve per the company books after charging against that reserve the retirement expenses and losses as per the company books, with of course the same qualifications as to the Jennings-Roma lines.

Q. In other words, the Jennings-Roma lines are eliminated from that?

A. They are on this statement, yes.

Q. And on the next succeeding column, under Adjusted depreciation if depreciation is at three percent; that is the depreciation you have calculated if three percent had been applied?

Mr. Coates: The same objection.

Q. Making a total of $384,913.30?

[fol. 403] A. That is the total provision for depreciation during the periods shown, at the rate of three percent.

Q. If that rate had been applied?

A. Had that rate been used, yes.

Q. Now, Mr. Lewis, referring back to the item on that page of the total book cost of the properties transferred to the United Gas Public Service Company, please state what the records of the company show with reference to the amount set up at the time that property was transferred?

The Court: From whom to whom?

Q. From South Texas Gas Company and Texas Border Gas Company to United Gas Public Service Company.

A. You mean the amount at which these properties were set up on the books of the United Gas Public Service Company, when they were transferred?

Q. Yes.

Mr. Coates: And as of what date?

A. These properties, shown on the exhibit, and also the Roma-Jennings Lines, were transferred to the United Gas Public Service Company on October 21, 1932, and the journal entry setting up those properties places them on the United Gas Public Service Company's books at $934,798.02, with a reserve for depreciation of $78,632.20.

[fol. 404] Q. And what is the date of that entry?

A. October 21, 1932.

Q. And that, as I understand it, includes not only the properties that you had set up in this exhibit, but also includes the Roma-Jennings line?

A. The explanation of that journal voucher is, "to record acquisition of properties, assets and assumption of liabilities of South Texas Gas Company under agreement dated October 21, 1932". I might add that the Texas Border Properties were first transferred to the South Texas Gas Company and then the total transferred to the United Gas Public Service Company, and this is the journal voucher or a transcript of the journal voucher setting up the transfer.

The Court: And the question was, does that include the Jennings-Roma line as well?

A. It purports to include all the properties, including that line.

Q. Now then, did you find anything in the books and records of the company, the amount they set up for the Roma-Jennings line; the cost of that line?

A. You mean the cost when it was built—the cost to the South Texas Gas Company?

Q. Yes.

A. Yes, I think I can give you that—no, I cannot give you [fol. 405] that figure, except including a telephone line that was built.

Q. This transfer of properties, according to that journal entry, included all the properties of the company, didn't it?

A. It purports to, from the explanation on the journal voucher.

Q. And your figures include the telephone line, as well as the Roma line?

A. I do not have the Roma line here, but I can give you the * * * The items of additions definitely identified as pertaining to that Jennings-Roma line, total cost to South Texas Gas Company per their books, was $963,942.73.

Q. Of the Roma line alone?

A. Yes, that is the Jennings-Roma line. No—that includes some gathering lines. That is the amount I have eliminated in preparing this statement for the Monterrey line, which includes gathering lines, the telephone line, and some meter and regulator stations. The Roma line was set up—the first item charged on the books to the Roma-Jennings line was in one journal voucher in 1929, setting up the cost of the line, which includes, I think, the telephone line, at $848,232.98.

Q. Where does that entry appear in the company books?

A. That is the entry on the South Texas Gas Company books in December, 1929, setting up the cost of the Roma-Jennings line.

[fol. 406] Q. And in making these computations, you have eliminated the Roma Jennings line entirely?

A. Yes.

Q. And the journal entry you just spoke of, when the properties were transferred from the South Texas and the Texas Border to United Gas Public Service Company, contemplated the entire properties?

A. Yes.

Q. Including the Roma lines?

A. Yes.

Q. And that entry was—if you will give it to us again, please, the total entry, including all the properties?

A. The total amount charged to fixed capital account on the United Gas Public Service Company's books, in transferring these properties, is $934,798.02, and a depreciation reserve of $78,632.20.

Mr. Coates: Will you identify that entry, Mr. Lewis?

A. That is J-10-156 of the United Gas Public Service Company books.

Q. Mr. Lewis, turning to page 1 of the exhibit, Historical Cost Per Books, the first item appearing there of $1,049,735.38; where is that carried forward from?

A. From the fourth column from the left of page 2, cumulative additions transferred to United Gas Public Service [fol. 407] Company on October 21, 1932.

Q. And that figure is exclusive of the Roma line?

A. Yes.

Q. Now, about the middle of the page, Historical cost of properties, December 31, 1933, on page 1 of the Exhibit, the sum of $1,151,993.65; what does that reflect?

A. That represents the historical cost of these properties that were transferred to United Gas Public Service Company on October 21, 1932, plus the net additions that the United Gas Public Service Company had made to those properties at December 31, 1933.

Q. Now, the next column, Retirement Reserves; just explain that to the Court and the jury.

A. The item of accrued book reserves on properties transferred, of $499,707.47, represents the accumulated or the net depreciation after charging retirements, from 1910, through October 21, 1932—the depreciation accumulated on the properties that were transferred to the United Gas Public Service Co.

Mr. Coates: Do you mean the net credit balance in the depreciation reserve was set up on the books?

A. Well, it is hard to say it exactly, because there have been a number of mergers, and each time this was wiped [fol. 408] out and they started over; but this represents the total cumulative reserve in all the properties.

Mr. Coates: You said the total depreciation reserve on the properties, and I wondered if you meant that.

A. Perhaps I had better start over, then. I will put it this way—the $499,707.47 represents the net accumulations of depreciation reserves set up on these properties from 1910 to October 21, 1932, per the company's books.

Q. Now, the next main heading, Retirement Reserves, adjusted to three per cent; explain that calculation.

The Court: Do you mean Adjusted, or Calculated?

Mr. Lange: It is calculated, and not adjusted.

The Court: I understand calculated and adjusted mean two different things, and I might be wrong about that but I want to be right on these things.

Mr. Lange: It is a calculation.

A. That section indicates that the depreciation reserve would be on these properties, had a rate of three per cent been used—that is, an annual rate of three per cent been used for providing depreciation reserves.

Q. And the total reflected at the bottom of that page, of $135,349.81; what is that?

A. That is the balance that would be in the depreciation reserve had depreciation been computed at three per cent per annum.

[fol. 409] Q. Now, Mr. Lewis, referring back to page 2 of the exhibit——

The Court: Let me ask a question right here: Your last column at the bottom of the page here, of $126,559.13——

A. That is carried forward from page 2.

The Court: I am looking at page 2 now; see here, I have my finger right on it—as a matter of book keeping, why shouldn't that be the difference between the next two columns to the left?

A. No, because the second column to the left is the actual depreciation per the company books, and these last two columns are entirely independent of the book depreciation but use as a basis the cost of the assets and use a rate of three per cent to compute depreciation.

Mr. Coates: Now, Mr. Lange, I don't want to break in, but are you using the term depreciation and accumulated depreciation in each case in your testimony to designate balances in the depreciation reserve account?

A. When I have referred to accumulated depreciation, that is what I mean, yes.

Mr. Coates: That is the book entries?

A. Yes. Now, this figure of $126,000.00 accumulated depreciation at October 21, 1932, is the balance that would have been in the depreciation reserve account, had depreciation

[fol. 410] been computed at three per cent per annum on the cost of the properties.

. . . . . .

A. That $126,000.00 figure is the $384,000.00 in the second column to the left, which was the total provision, less the figure of $206,496.46, which amounts have actually been charged to the reserves of the company on the company books, and the item of $51,857.71.

. . . . . .

(Defendant's objection and motion to strike both overruled.)

[fol. 411] JOHN PATRICK KINNEY, a witness for the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name, please.
A. John Patrick Kinney.
Q. Where do you reside?
A. San Antonio, Texas.
Q. What is your occupation?
A. Certified public accountant.
Q. How long have you been in that occupation?
A. About twenty years.
Q. Have you had occasion during the twenty years of that work to make any audits of any utilities properties?
A. Yes, sir.

. . . . . .

Q. Mr. Kinney, when you first began the work in connection with this audit what did you do?
A. The first thing that I had to do was to get hold of records, and I spent considerable time in locating records.
Q. Whom did you get in touch with at the Gas Company?
A. Mr. Robertson, who was then Manager, I believe, of the Laredo unit, and his chief accountant, I think his name was Thorne.

[fol. 412] Q. You inquired of them and requested them to give you access to the records and books of the company for the purpose of making this audit?

A. Yes, sir.

Q. All right; what did you do then?

A. Well, I asked for certain records, and they were not produced at that time. Certain records were given me, and then I believe Mr. Robertson, with Mr. Thorne, showed me where the vault was in the Laredo office, showed me where the papers and records were, and told me what I needed to go and get.

Q. What did you do then?

A. I tried to get the original documents right at the inception of the company.

Q. You are speaking of the——

A. Of the Border Gas Company.

Q. And what documents were furnished you in connection with that?

A. Well, the old ledgers of the Border Gas Company, they were given to me. They run down for several years; and then certain vouchers, letters, and such as that were handed to me, pertaining to the inception of the Border Gas Company. Some of the papers pertained to the franchise holders previously, I think, Johnson and Reiser.

[fol. 413] Q. In connection with those records that were furnished to you by the Company, I will ask you whether this inventory is one?

A. Yes, sir.

Q. Together with the letter accompanying it?

A. Yes, sir; they were both attached.

Q. What is the date of that letter?

A. April 14, 1921.

Q. And the inventory attached to it?

A. December 31, 1910.

Mr. Lange: We desire at this time to introduce this letter and inventory in evidence. It was identified yesterday by Mr. Stein as having been signed by him.

(Thereupon the letter and attached inventory referred to above were offered in evidence, and marked Plaintiff's Exhibit No. 6, and same is copied in this transcript below.)

Q. Will you look at this letter, Mr. Kinney, and the inventory attached to it?

A. Yes, sir.

Q. How did you then proceed in connection with this matter? What does the letter represent? First, what does it say?

A. The letter is written by Mr. Stein to Mr. G. R. Page, Houston, Texas, and it is outlining the analysis of the investment.

[fol. 414] Mr. Lange: I will just read it. It is dated at Laredo, Texas, April 14, 1921. (Reads as follows:)

"Mr. G. R. Page, Houston, Texas.

DEAR SIR:

The enclosed copy of trial balance and copy of analysis of investment as of December 31, 1910, covers our record of property acquired by the old company prior to January 1, 1911 when the present accounts of Border Gas Company were begun. All vouchers and other records, I understand, were sent to Houston when the original plant was completed and turned over to Border Gas Company.

From information I have been able to obtain all of this property was purchased by the old company during the calendar year 1910, all of the construction work having been begun and completed during that year.

Trusting that this will enable you to prepare the statement as outlined in your letter, I am

Very truly yours, (Signed) W. W. Stein."

Mr. Lange: Now, the enclosed trial balance referred to in that letter reads as follows (reads):

[fol. 415] "Border Gas Company

Analysis of Investment

Statement	December 31, 1910
Real Estate	150.00
Rights of Way	10.93
Buildings	14.72
Tools	34.13
Fittings	17,364.05
Telephone Line from Reiser to Laredo	1,601.95
Labor, Teaming, Freight & Miscellaneous	31,718.83
Gas Receivers and Regulators	2,382.20
Gas Meters	5,791.00
Office Furniture	332.68
Horses and Wagons	225.00
Automobile	1,535.00

Line Pipe Size	Length Feet	Inches		
1"	3,039'	9"	130.49	
1¼"	3,034'	4"	177.04	
2"	28,905'	8"	2,684.66	
3"	34,562'	2"	5,527.21	
4"	89,203'	4"	22,316.43	
6"	36,672'	4"	13,032.26	
8"	128,649'	2"	71,838.25	
[fol. 416]				
10¾"	2,213'	4"	1,862.03	
12¾"	155'	11"	163.64	
16"	150'	7"	208.60	
				117,940.61
Total Investment				179,101.10

Border Gas Company

Balance Sheet		December 31, 1910
Investment	179,101.10	
Gas Ledger	648.23	
Warehouse Account	923.94	
Cash—Milmo National Bank	2,896.69	
Petty Cash	69.23	
Southern Trust Company		182,990.96
Gas Earnings		516.58
Producers Oil Company		131.65
	183,639.19	183,639.19

[fol. 417] Q. Mr. Kinney, in connection with this inventory what original books of entry did you find as beginning or opening entries of the Border Gas Company?

A. I found Journal Voucher Number 1, which debited Plant and Equipment $550,000.00, and credited Capital Stock $300,000.00 and Surplus $250,000.00. That was the only opening entry on the Border Gas Company's books.

Q. That was the only one of their original books?

A. Yes, sir.

Q. That you found among their records?

A. Yes, sir.

Q. How did you then proceed in making your opening entry of this audit--your beginning point of this audit?

A. Naturally, I wanted to know what the Plant and Equipment were, $550,000.00. I wanted an analysis of it, to see what the stock was issued for and the surplus. And after considerable looking and digging around in the vaults I ran across some inventory sheets—tax returns made to the Government, tax claims, and such as that, and began to unearth some of the individual detailed analysis sheets, which I tried to tie back into the opening entry. Not being able to do that, for the tax returns disclosed the actual amounts on which depreciations were being taken by the Company there at that time was taken on the basis of [fol. 418] $166,996.68, I believe, and the records showed that the balance of the $383,000.00 was the value of intangibles, good will, and such as that, making up the $550,000.00 for which the opening journal entry was set up.

Q. How did you finally arrive at the beginning point of $166,996.68, as shown at the top of page 2 of Exhibit 4?

A. Well, that was the basis as shown here on this trial balance and analysis of investment, as they call it, after a credit that went to Materials and Supplies amounting to $12,104.42 that was taken off of this investment of $179,101.10. That made the $166,996.68, which was further verified by actual Journal vouchers, on which the Company was computing their depreciation when they did start computing it regularly.

Q. How later in years did the Company use that $166,996.68 in connection with the computation of their depreciation?

A. They were using that up to the time I stopped.

Q. What year was that?

A. 1928. That ran through the yearly journal entries in setting up their depreciation.

* * * * * * *

[fol. 419] Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Turn now to Plaintiff's Exhibit 4. These four columns headed "Historical Cost per Books" purport to show the historical cost as reflected by the ledgers of the Company after the elimination of everything from the opening entry except the $166,996.68?

A. That is correct.

Q. And do any of these columns here contain anything for Materials and Supplies Account?

A. You mean not used nor put into actual construction?

Q. For the Material and Supplies kept on hand account.

A. Inventory account?

Q. Yes.

A. No; these do not include that.

Q. Are there any items in these for cash working capital?

A. Cash working capital?

Q. Yes.

A. No. These are just fixed properties.

Q. These are just the property additions, and I believe you said you carried this down to April 10, 1928, and that is as far as you assumed responsibility for it?

A. Yes, sir.

[fol. 420] Q. And at that time what was the total amount of Additions, including in the opening entry only the $166,996.68?

. . . . . .

A. $1,079,671.95.

Q. And the cost of the Property retired during that same period?

A. $73,159.82.

Q. And the amount of Net Additions?

A. $1,006,512.13.

Q. And the Accumulated Additions?

A. $1,006,512.13.

Q. Is it your testimony here that that represents the historical cost of the physical plant and property of the Company, as the same is reflected by these books and ledgers as of that date?

A. The Company records. Now, those are the ledgers that were presented to me.

Q. Yes, sir.

A. At Laredo.

Q. Yes.

A. And I assumed that those are the Company ledgers.

Q. I assume so, too, and from the ledgers you had these figures reflecting Additions, Retirements, and the Net Additions, and Accumulated Additions over this period?

[fol. 421] A. Yes, sir; that is right.

Q. Excluded the opening entry and confining the amounts to capital charges for plant and property?

A. No; not excluded all that opening entry; excluding everything except the $166,996.68.

Q. If the entire opening entry were included that would increase each amount by some three hundred thousand dollars, would it not?

A. Three hundred eighty some odd thousand.

* * * * * * *

[fol. 422] Leon O. Lewis, a witness for plaintiffs, resumed his testimony and testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Mr. Lewis, you stated that in connection with your work in making this audit for the City of Laredo you made supplemental audits bringing the audit periods finally down to and through December 31, 1933?

A. That is correct.

Q. Did you, in connection with the making of that audit over the period, prepare an exhibit?

A. Yes, sir.

(Defendant objects to that part of instrument dealing with years prior to 1932; objection overruled.)

Q. Will you identify the exhibit, Mr. Lewis?

A. Yes, I prepared this.

* * * * * * *

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 8.)

A. What is this exhibit number?

Q. No. 8—Plaintiffs' Exhibit No. 8. Mr. Lewis, this exhibit was prepared by you in connection with the making of this audit for the City of Laredo?

[fol. 423] A. Yes, sir.

Q. From the books and records of the South Texas Gas Company, the Texas Border Gas Company, and the United Gas Public Service Company?

A. Yes, sir.

[fol. 424] The following are pages 1786, 1790 and 1794-1797 from S. F. Vol. III.

[fol. 425]

PLAINTIFFS' EXHIBIT No. 8

Page 1

South Texas Gas Company—Texas Border Gas Company—United Gas Public Service Company

Consolidated Statement of Earnings from Operations Within the City Limits of Laredo

For the Years Ended June 30, 1929, June 30, 1930, June 30, 1931, July 31, 1932, & December 31, 1933

	Consolidated South Texas Gas Company & Texas Border Gas Company				United Gas Public Service Company
	Year Ended June 30			Year Ended July 31,	Year Ended Dec. 31,
	1929	1930	1931	1932	1933
Operating Revenues—					
Gas Sales	$281,320.97	$319,473.23	$254,152.13	$192,349.13*	$157,199.62*
Forfeited Discount	7,899.28	8,451.06	7,176.81	.....	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,108.96	1,623.00
Total Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
Operating Expenses—					
Gas Purchases	$56,132.05	$62,233.89	$50,412.75	$22,551.10	$14,997.10
Transmission System Operation	4,473.46	8,779.63	4,727.45	3,167.15	2,511.69
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,757.74	1,645.39
Distribution System Operations	17,515.93	19,318.45	13,701.53	11,561.46	10,814.78
Distribution System Maintenance	3,773.79	5,554.47	8,290.11	12,506.66	4,609.09
Customers' Expense	.....	.....	8,618.47	15,367.28	14,145.74
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33	2,805.19
General Office and General Expense	41,520.51	50,577.60	25,117.95	29,884.60	27,876.42
Taxes—Other than Income Tax	10,619.67	14,341.39	15,550.53	12,738.30	13,893.06
Other Operating Expense	.....	.....	362.96	.....	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
Net Return Before Providing for Depreciation or Income Tax	$149,452.24	$162,331.42	$129,347.66	$80,308.47	$65,524.16

Note.—Includes Forfeited Discounts.

[fol. 426] Pages 1787-1789, both inclusive, of S. F. Vol. III omitted.

[fol. 427]

Plaintiffs' Exhibit No. 8—Continued

South Texas Gas Company

Statement of Earnings

For the Year Ended July 31, 1932

				Texas Border Gas Company			
					Laredo		
	Total	Misc. Sales	Monterrey Line	Other Towns	Total	Outside City	Inside City
Operating Revenues:							
Gas Sales	$309,211.57	$5,385.25	$177,455.14	$10,692.72	$115,678.46	$20,448.51	$95,229.95
Rent Revenues	122.74	1.94	75.24	3.85	41.71	7.38	34.33
Total Operating Revenues	$309,334.31	$5,387.19	$177,530.38	$10,696.57	$115,720.17	$20,455.89	$95,264.28
Operating Expenses:							
Gas Purchases	$115,496.85	$1,862.40	$81,892.10	$2,261.95	$29,480.40	$6,776.75	$22,703.65
Transmission and Gathering System Exp.	16,504.16	259.12	11,843.38	288.82	4,112.84	945.69	3,167.15
Transmission and Gathering System Maintenance	9,159.69	143.81	6,572.99	160.30	2,282.59	524.85	1,757.74
General Office and General Expense	18,545.47	293.02	11,368.37	582.33	6,301.75	1,114.58	5,187.17
Taxes	8,582.27	166.14	5,176.35	319.80	2,919.98	613.05	2,306.93
Total Operating Expenses	$168,288.44	$2,724.49	$116,853.19	$3,613.20	$45,097.56	$9,974.92	$35,122.64
Net Return Before Providing for Depreciation	$141,045.87	$2,662.70	$60,677.19	$7,083.37	$70,622.61	$10,480.97	$60,141.64

[fol. 428] Pages 1791–1793, both inclusive, of S. F. Vol. III omitted.

[fol. 429]

Plaintiffs' Exhibit No. 8—Continued

Texas Border Gas Company

Statement of Earnings for the Year Ended July 31, 1932

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo City Gate	Less: Outside City Limits	Operations Inside City Limits
Operating Revenues:						
Gas Sales	$256,137.03	.....	$25,155.73	$230,981.30	$38,632.17	$192,349.13
Reconnect Charges	2,183.40	.....	301.53	1,881.87	73.14	1,808.73
Rent Revenues	175.50	.....	.....	175.50	.....	175.50
Miscellaneous Operating Revenues	109.12	.....	15.07	94.05	3.65	90.40
Merchandise and Jobbing Sales	10,780.60	$10,780.60	.....	.....	.....	.....
Total Operating Revenues	$269,385.65	$10,780.60	$25,472.33	$233,132.72	$38,708.96	$194,423.76
Operating Expenses:						
Gas Purchases	$126,218.63	.....	$10,692.72	$115,525.91	$20,448.51	$95,077.40
Distribution System Operations	13,956.38	.....	1,927.38	12,029.00	467.54	11,561.46
Distribution System Maintenance	15,097.36	.....	2,084.94	13,012.42	505.76	12,506.66
Customers' Expense	18,550.55	.....	2,561.83	15,988.72	621.44	15,367.28
New Business Expense	6,395.08	255.80	604.98	5,534.30	918.97	4,615.33
General Office and General Expense	20,122.54	804.90	1,903.59	17,414.05	2,891.61	14,522.44
General Expense—Divisional Operations	14,098.64	563.95	1,333.73	12,200.96	2,025.97	10,174.99
Taxes	12,272.06	.....	1,133.15	11,138.91	707.54	10,431.37
Merchandise & Jobbing Expenses	15,670.82	15,670.82	.....	.....	.....	.....
Total Operating Expenses	$242,382.06	$17,295.47	$22,242.32	$202,844.27	$28,587.34	$174,256.93
Net Return Before Providing for Depreciation	$27,003.59	$6,514.87(R)*	$3,230.01	$30,288.45	$10,121.62	$20,166.83

* (R) Denotes figure in red.

[fol. 430] Plaintiffs' Exhibit No. 8—Continued

South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management fees	$7,656.27	$11,811.82	$2,220.91	$1,815.56
Loss on Bad Debts	723.30	2,138.14	1,294.80	2,874.47
Advertising	1,283.76	2,591.58	1,495.04	2,054.63
General Office Expense Prorated from United Gas Company	.....	.....	9,899.93	12,389.37
Special Payrolls Prorated from United Gas Company	.....	.....	5,069.25	3,154.26
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,838.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,342.32
General Expense Prorated from United Production Company	.....	.....	.....	153.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

[fol. 431]

PLAINTIFFS' EXHIBIT No. 8—Continued

South Texas Gas Company

Questionable Items Contained in Operating Statements
Years Ending June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929—				
Management Fees	General Expense	$3,178.93	80.32%	$2,553.32
Year Ended June 30, 1930—				
Management Fees	General Expense	$7,495.84	58.51	$4,385.82
Year Ended June 30, 1931—				
Management Fees	General Expense	$2,935.80	29.22	$857.84
General Office Expense Prorated	" "	7,051.78	29.22	2,060.58
Special Payrolls—United	" "	5,541.80	29.22	1,619.31
General Expense—Southern Gas Co.	" "	1,985.22	29.22	580.08
Total		$17,514.60		$5,117.76
Year Ended July 31, 1932—				
Management Fees	General Expense	$1,882.79	27.97	$526.62
General Office Expenses Prorated	" "	10,023.60	27.97	2,803.60
Maintenance General Structures	" "	387.66	27.97	108.43
General Expenses—Southern Gas Co.	" "	3,308.47	27.97	925.38
General Expense—United Prod. Co.	" "	550.38	27.97	153.94
Total		$16,152.90		$4,517.97

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[fol. 432]

PLAINTIFFS' EXHIBIT No. 8—Continued

Texas Border Gas Company

Questionable Items Contained in Operating Statements
Years Ending June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929—				
Management Fees	General Expense	$7,075.64	72.12%	$5,102.95
Loss on Bad Debts	" "	1,002.91	72.12	723.30
Advertising	New Bus. "	1,780.03	72.12	1,283.76
Total		$9,858.58		$7,110.01
Year Ended June 30, 1930—				
Management Fees	General Expense	$10,293.87	72.14	$7,426.00
Loss on Bad Debts	" "	2,963.87	72.14	2,138.14
Advertising	New Bus. "	3,592.43	72.14	2,591.58
Total		$16,850.17		$12,155.72
Year Ended June 30, 1931—				
Management Fees	General Expense	$2,020.56	67.46	$1,363.07
Loss on Bad Debts	Customers' "	1,574.80	82.22	1,294.80
Advertising	New Bus. "	2,216.18	67.46	1,495.04
General Off. Exp. Prorated	General "	10,879.63	67.46	7,339.40
Spec. Payrolls—United Gas Co.	" "	5,114.06	67.46	3,449.94
General Expense Prorated—Southern Gas Co.	" "	205.57	67.46	138.68
Total		$22,010.80		$15,080.93

Year Ended July 31, 1932—				
Management Fees	General Expense	$1,785.98	72.17	$1,288.94
Loss on Bad Debts	Customers' "	3,348.19	82.84	2,773.64
Loss on Bad Debts	General "	139.72	72.17	100.83
Advertising	New Bus. "	2,846.93	72.17	2,054.63
General Office Expense Prorated	General "	13,282.22	72.17	9,585.77
Maintenance General Structures	General "	451.67	72.17	325.99
General Expense Prorated—Southern Gas Company	" "	1,264.56	72.17	912.63
Special Payrolls—United Gas Co.	" "	4,370.59	72.17	3,154.26
Donations	" "	343.16	72.17	247.66
Donations	Dist. System Operations	241.50	82.84	200.06
Testing Mains for Leaks	Dist. System Operations	1,016.84	82.84	842.35
Laredo Rate Case Expense	General Expense	1,859.94	72.17	1,342.32
Total		$30,951.30		$22,829.08

[fol. 433] Page 1798 to end of Plaintiffs' Exhibit 8 omitted from S. F. Vol. III.

* * * * * * *

[fol. 434] Q. That page I shows the operating revenues for what periods of time?

A. For the year ended June 30, 1929, the year ended June 30, 1930, the year ended June 30, 1931, the year ended July 31, 1932, and the year ended December 31, 1933.

* * * * * * *

Q. Now, for the year ended June 30, 1929, what does this net return show?

A. The net return, before providing for depreciation and income taxes, is $149,452.24.

Q. And for the year ended June 30th, 1930?

A. $162,331.42.

Mr. Coates: It is understood our objection goes to all this?

The Court: Yes, sir.

Q. And for the year ended June 30, 1931.

A. $129,347—and, I believe that is sixty-six cents.

Q. Yes, sixty-six cents.

A. My copy isn't clear.

Q. Now, Mr. Lewis, the next period is for the year ended July 31, 1932. Why was the period ending July 31, 1932, chosen instead of just continuing the twelve month period?

[fol. 435] A. At the time the case was——

Q. You mean the hearing before the Railroad Commission?

A. Yes. It was prepared for the hearing before the Commission, and that was the latest possible date that we could get the figures at that time.

Q. And that is why that period was chosen?

A. Yes.

Q. And that shows a net return for that period of how much?

A. $80,308.47.

Mr Coates: Are you in each case referring to before depreciation and income tax?

Mr. Lange: Yes, sir.

Q. And the last period covers the period of operations of the United Gas Public Service Company for the year ended

December 31, 1933. Now, when was it that the United Gas Public Service Company took over these properties?

A. On October 31, 1932.

Q. And what does the net return for the last period show?

A. Before depreciation and income taxes, $65,524.16.

* * * * * * *

Q. Now, Mr. Lewis what do the items appearing on page 10 show?

A. Page 10 is a summary of items allocated to Laredo in the preceding exhibits upon which I was unable to make [fol. 436] or I was unable to get detailed verification or items which in rate controversies have been questioned as to their propriety in rate controversies, and I have included those items in my preceding items, and have set them out here for the information of anyone reading the exhibit.

Q. That is for reference to operations within the city limits of Laredo?

A. The amounts shown on page 10 over the net amounts allocated to the city of Laredo in the preceding exhibits.

Q. What do the figures on page 11 reflect?

A. Page 11 is in support of—pages 11 and 12 support the items summarized on page 10; page 11 showing in detail the questionable items in the operating statements of the South Texas Gas Company, the total and the amounts allocated to Laredo; and page 12 shows the same items contained in the Texas Border Gas Company's statements, both in total and the amount allocated to Laredo; pages 11 and 12 are summarized for convenience on page 10.

* * * * * * *

Q. Mr. Lewis, turn to Exhibit 8, page 1, the item of Gas Purchases. Those were computed at the actual gas purchase figures as represented by the Company's books?

A. For each year.

[fol. 437] Q. For each of the years? For the year 1929?

A. No.

Q. What adjustments did you make? Explain them.

A. Those first three periods—well, the first four periods show the gas at 5 cents a thousand cubic feet. During the first three periods, that is June 30, 1929, June 30, 1930, and June 30, 1931, those purchases were entered on the

Company books at 8 cents a thousand for industrial gas and 13 cents a thousand cubic feet for domestic gas; but there was an amended contract in December, 1929, amending the prior contract, that all gas billed from the South Texas Production Company was to be billed at 5 cents a thousand cubic feet; and while the Company continued billing under the old contract of 8 cents and 13 cents, their books were later adjusted to a basis of 5 cents a thousand cubic feet; so I adjusted the first three periods to 5 cents a thousand cubic feet. During the year ending July 31, 1932 the gas was actually billed at 5 cents, and that was the rate that I used. For the year ending December 31, 1933, I have set up the Gas Purchases at the actual purchase price, as shown by the books for the Laredo line, and have allocated to the city limits of Laredo the proportionate part of that total Gas Purchases for the Laredo line which the deliveries to the City limits of Laredo bear to the total.

• • • • • • •

[fol. 438] Q. Mr. Lewis, in your statement of Operating Expenses, as they appear on page 1 of the Exhibit, have you included any operating charge for pipe line rental?

A. I have not.

Q. Why? Explain why you have not included in that item and allocated any part of it to Laredo as an Operating Expense?

A. That pipe line rental is——

Q. Where is that pipe line located?

A. According to my understanding the pipe line rental is paid to the Southern Gas Company on this section of line from Jennings Junction to Jim Hogg Junction, and from analysis of the gas purchases and deliveries for the year, there was sufficient gas produced from the west side of the Junction that made it unnecessary for any gas to flow through that line——

Mr. Coates: This witness has qualified here as an accountant, and he is now attempting to testify as to what is necessary or not necessary in the operation of this Company's property.

The Court: I think you misunderstood him.

(Defendant objects; objection overruled.)

Q. Mr. Lewis, have you included in the Operating Expenses reflected on page 1 for any of the periods any item of gathering charge?

[fol. 439] Mr. Coates: Page 1 of what?

Q. Of this same Exhibit 8.

A. I have included in this exhibit portions of gathering field expenses, but I have not included any part of the one cent gathering charge paid to the Southern Gas Company in the Carolina-Tex field.

Q. Why?

A. That gathering charge—there are several reasons why I didn't include it. In the first instance, that gathering charge did not go into effect, either directly or indirectly, until after the Monterrey or the Jennings-Roma line was built, so that it appeared that at least one of the reasons why that gathering charge was necessary was so that the gas that had formerly been going to Laredo might go down the Mexico line, so that I considered that charge of one cent——

Mr. Coates: We object to an accountant testifying with respect to matters of operation.

(Objection overruled.)

Q. Go ahead and make your complete statement.

A. —was brought about, at least partially by the construction of the Jennings-Roma line.

[fol. 440] Mr. Coates: It is understood our objection goes to all this testimony?

The Court: Yes, sir.

A. Another reason that I excluded the gathering charge in all my exhibits is that the contract under which it is charged was made with an affiliated company, and was therefore subject to some question.

Mr. Coates: We object to that further because it is a legal conclusion of this accounting question.

A. He asked me for my reasons why I got it out.

The Court: You are giving the reasons that occur to your mind; you are not trying to state legal reasons?

A. No, sir.

The Court: The objection is overruled.
Mr. Coates: Note our exception.

A. There were also some other facts in connection with that which made me somewhat doubt whether or not it was a proper charge. For sometime after the contract was entered into between the South Texas Gas Company and the Southern Gas Company, providing for gas deliveries at 5 cents on the South Texas controlled wells, and 6 cents on some others, the Southern Gas Company billed gas direct to the South Texas Gas Company at either 5 or 6 cents per thou- [fol. 441] sand cubic feet. At the same time the South Texas Production Company, another affiliated company, was billing gas in the same field at 8 cents and 13 cents per thousand cubic feet. After the South Texas—Southern Gas Company contract providing for 5 and 6 cent gas came into effect, the Southern Gas Company delivers, and the South Texas Gas Company were billed direct at 5 and 6 cents, until February, 1931, when the South Texas Gas Company was transferred from the Laredo Division to the San Antonio for accounting purposes. Beginning at that time, the Southern Gas Company stopped billing gas direct to the South Texas Gas Company, and began billing it through the South Texas Production Company at increased rates up to 8 cents per thousand cubic feet, and in addition to that, charged the one cent gathering charge. All of those circumstances influenced me in eliminating the gathering charge. There was also a clause in the Southern Gas Company—South Texas Gas Company contract which caused me to make the elimination, and that was the paragraph that provides that the South Texas Gas Company should pay the operating costs of the transmission lines belonging to the Southern Gas Company, which it was using.

Mr. Coates: Transmission?
[fol. 442] A. The gathering lines. If I remember correctly, it has been a long time since I have seen that contract. It has been introduced here, hasn't it?

* * * * * * *

Mr. Coates: That was introduced and marked as Defendant's Exhibit 7, and two copies of it furnished to counsel for the plaintiff.

* * * * * * *

A. Let's see. I had a copy of it, but I haven't seen it for a good long while. Paragraph 3 of this contract recites that "South Texas shall operate said gathering system and pay all the costs of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system". But my interpretation of this contract, if I may state it——

* * * * * * * *

A. —is that South Texas shall pay the operating costs.

The Court: Wait just a moment. I think you have gone far enough to show that you didn't include that one-cent, because of that paragraph you have now read.

* * * * * * *

Mr. Bobbitt: Any other reasons?

A. That's all I can recall at the present.

[fol. 443] The Court: Now, as I understand, you have given a number of reasons why you didn't include that one-cent gathering charge in the cost of gas to the Laredo line.

A. The one-cent gathering charge?

The Court: The one-cent gathering charge. And the exhibit which you have made and introduced here showing the cost of gas purchased does not include that one-cent gathering charge?

A. It does not.

(Defendant's motion to strike made and overruled.)

* * * * * * *

[fol. 444] A. All the sales made in the Laredo town plant, and I will use that term to designate both inside and outside the city of Laredo on the distribution system, pass through the Laredo city gate except for small deliveries which are made from the transmission line before the gas reaches the city gate; but except for that small amount of gas, all gas sold there in the city of Laredo or outside the city limits on the Laredo distribution system, passes through the Laredo city gate meter.

Q. And there is also a meter that serves the smelter situated outside the city of Laredo?

A. Yes.

Q. The Timonox Refinery, I believe it is.

A. Yes.

Q. Now, will you explain the method of allocation followed by you in connection with the distribution properties, Mr. Lewis?

A. The distribution system operating expenses, or the distribution system operations, distribution system maintenance and customers expenses, have been allocated on the basis of the average number of meters served for the twelve months periods indicated.

* * * * * * *

[fol. 445] Q. * * * What method of allocation did you pursue with reference to any of the other operating items affecting the distribution system in the city of Laredo?

A. The new business expense was allocated to the city of Laredo on the basis of gross revenues.

Q. Now, explain how you proceeded on that?

A. Well, I charged to the city limits of Laredo, the proportional part—and I am speaking of the first four periods shown on the exhibit now.

Q. That is, 1929, 1930, 1931 and July 31, 1932?

A. Yes.

Mr. Coates: This does not apply to the calendar year of 1933?

A. The first item we discussed does—that is, the meter basis, and the same method is pursued in connection with new business expense, except that for the first four years, I took the total new business expense of the Texas Border Gas Company, and allocated that proportionate part to the City Limits of Laredo which the gross revenues in the city of Laredo bear to the total gross revenues of the company. For the year ended December 31, 1933, the district new business expense of the Laredo district of United Gas Public Service Company is allocated on the basis of gross [fol. 446] revenues. That is, the city of Laredo is charged with that proportionate part of the district new business expense which the city of Laredo's gross revenues bear to the total gross revenues of the Laredo district.

Q. Now, did you apply that method to any other item of operating expenses in the city of Laredo distribution system?

A. General expenses for the first four periods named, the years ended June 30, 1929—1930 and 1931, and the year ended July 31, 1932, are allocated on the basis of gross revenues, taking the total general expense of the Texas Border Gas Company, and allocating to the city of Laredo that proportionate part of the total which the gross revenues within the city of Laredo bear to the gross revenues of the company.

For the year ended December 31, 1933, the district general expenses of the Laredo district of United Gas Public Service Company are allocated on the basis of gross revenues, that is, the city of Laredo is charged with the proportionate part of the district general expense which the total revenues or gross revenues within the city of Laredo bear to the total gross revenues for the district.

The general office and general expense of the Houston office was allocated—Well, starting with the general of-
[fol. 447] fice, the total general office and general expenses of the general office was first allocated to the Laredo district. The first allocation was to segregate that total as between the production, transmission and distribution departments. For that segregation, I used the same percentages that the company has indicated in their manual; * * *

* * * * * * *

A. * * * Anyway, in the Houston offices, I discussed at length with the employees and officials of the company, their methods of allocation of expense, and undertook to use, for the allocation between production, transmission and distribution system departments, the same method of allocation that they have used. The part of that which was allocated to distribution system, I have allocated to the Laredo district on the basis of gross revenues, operating expenses and number of customers, given equal weight in the percentage to each of the three items mentioned. The allocation from the Laredo district to the city limits of Laredo I have allocated on the basis of revenues and number of meters.

Q. Does that comprise all the allocations that you have made, affecting the operating expenses in the city of Laredo—the distribution system operating expenses?

[fol. 448] A. No, there is distribution system taxes.

Q. How did you allocate those?

A. I did not make an analysis of the tax account. The taxes are all carried on the general office books in Houston, and an analysis of that account for the entire United Gas Public Service Company entailed quite a bit of time, and I have taken the company's analysis of the tax account, and those items of ad valorem taxes as specifically applied to the South Texas area I have divided between the distribution system and the transmission system properties. In other words, I took the taxes paid on the old Texas Border Gas Company properties and allocated them on a number of bases.

* * * * * * *

Q. Now, give us the methods you pursued with reference to allocating the transmission system operating expenses of the transmission properties serving Laredo.

A. Gas purchases are allocated direct to the city of Laredo; that is, taking the gas deliveries to the Laredo line, and allocating to the city limits of Laredo that proportionate part which the volume bears to the total volume delivered to the line, so that gas purchases is really not an allocated figure.

Q. That is a direct charge?

A. It is an actual figure. Transmission system opera- [fol. 449] tions and maintenance for the first four periods shown are allocated on the basis of volume delivered by the transmission system.

Q. Just in connection with that, Mr. Lewis, please explain how that operates?

A. The theory is in burdening each thousand cubic feet of gas transported with the same unit transportation cost and maintenance, or spreading the total cost of transporting gas and maintaining the lines to the various units transported.

Q. Do you think the use that method is a fair method of allocation to both the company and the city?

A. Yes, I think it is a fair method of allocation, because my study of the South Texas area indicated that there was a closer relationship between the volumes of gas delivered and the transmission system operating expenses than any other two known factors that I could find, and the relationship between those two was very close.

Q. Now, are there any other factors——

A. In connection with those two items, I had not given my allocation for the year ended December 31, 1933.

Q. All right; do that, then.

A. Transmission system operating expense was allocated on the basis of the transmission system operating ex- [fol. 450] penses of district 70, and the South Texas Gas Company for the last year that they were separated; in other words, The South Texas Gas Company, upon the transfer of the properties, was placed in District 70 of United Gas Public Service Company.

* * * * * * *

Mr. Coates: I beg your pardon—is that both transmission operations and maintenance to which you have been referring?

A. That is just transmission system operations. The transmission system maintenance has been allocated on the same basis.

* * * * * * *

Q. That concludes all allocations you made with reference to transmission operating expenses?

A. No, there is the general expense of the transmission system, which for the years ended June 30, 1929, June 30, 1930, June 30, 1931, and July 31, 1932, have been allocated on the basis of gross revenues, allocating to Laredo the proportionate part of the South Texas Gas Company general expense which the gross revenues from gas deliveries for the city of Laredo bear to the total revenues from gas deliveries for the South Texas Gas Company. For the year ended December 31, 1933, the district general expense has been allocated on the basis of proportion of the lineal miles and three inch equivalent miles, giving each item [fol. 451] equal weight in the allocation percentage. The general expense of the general office in Houston for the year ended December 31, 1933, has been allocated, first by taking the total general office expense, and allocating it as between transmission, distribution and production departments, as stated in connection with the distribution system expense. Then taking that part of the general expense relating to transmission properties, I have allocated the total transmission general expense to the South Texas area on the basis of lineal and three inch equivalent pipe,

and have allocated to the City of Laredo, from the South Texas area, upon the same basis.

* * * * * * *

Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Well, now, for the accounting periods which you have reflected in Plaintiff's Exhibit No. 8, do the operating revenues therein shown contain accounts which have not been paid, and proven to be uncollectible?

A. For the year ended December 31, 1933, there is included in customers expense the amount that the company set up during that year in the reserve account.

[fol. 452] Q. How much?

A. For the year ended December 31, 1933, there was set up as a provision for bad debts and charged to operations in the Laredo district, $2,633.67. I have allocated to the city limits of Laredo the proportionate part of the amount which the gas sales within the city limits of Laredo bear to the total gas sales for the district; so that I have included in my exhibit as a provision for bad debts, $1940.75. Now, there was an additional reserve for bad debts set up in the San Antonio transmission district of $815.00. I have allocated no part of that $815.00 to the city limits of Laredo for the reason that the transmission system does not have any credit sales in the city limits of Laredo.

Q. Do you know whether the transmission system has any losses with respect to bad debts?

A. If they do; even if they have them, they could not arise within the city limits of Laredo, because they have no credit customers within that boundary.

Q. Now, in what account classification does this item of $1940.75 appear in your operating statement for 1933, as contained in plaintiff's Exhibit 8?

A. It is included in customers expense in the total of $14,145.74.

[fol. 453] Q. I see; now, having included that item in this operating statement for 1933, haven't you, in another portion of this exhibit set forth the item on a page which you head as what you consider questionable items?

A. I have not.

Q. You have not. Well, have you done that with respect to any of the operating expense accounts for the period 1933?

A. No, sir.

Q. Have you done that for all of the other periods which are set forth in Plaintiff's Exhibit 8?

A. For the first four years shown in the Exhibit, I have set forth on page 10 a summary of questionable items.

Q. Now, you have not done that with respect to the operating statement for the year 1933?

A. No, sir; I have not.

Q. Why?

A. Because the major portion of the items set forth in the questionable items, was not susceptible of any verification on my part in prior years, for the reason that not all of the charges but most of them originated on the books of the operating companies of the United Gas System group. My examination was confined to the South Texas Gas Company and the Border Gas Company for the first four yearly periods mentioned, and all I saw in support [fol. 454] of those items was inter-company invoices, and I was not able or had no way of determining whether the items were proper or not.

* * * * * * *

Q. Now, with respect to the year ended July 31, 1932, Mr. Lewis, what amount of uncollectible accounts do you include in the operating expenses for that period?

A. $2,874.47.

Q. And is that included in the item of customers expense?

A. There is included in customers expense $2,773.64, and in general expense, $100.83.

Q. Now, does that represent the reserve, or actual uncollectibles for that twelve months period?

A. That represents the reserve.

Q. And that is the reserve which was set up for uncollectible accounts for that particular period. Do you know what the actual uncollectibles were within that accounting period, Mr. Lewis?

A. I believe I have that information, Mr. Coates. I might add that during that accounting period, there were charged off numerous accounts which had accumulated over a past

period of as much as two years prior thereto; they had neglected to charge off accounts, and they just cleaned them out in that period, so the charge-offs were much heavier in that year than normally they would be.

[fol. 455] Q. If you do not have that readily available, I will waive the question for the time being, and we can come back to it later. * * *

A. During that period I know they charged off a lot of accounts for as much as two years back, and used up all the reserves and had to set up some more.

Q. Now, Mr. Lewis, I believe you have included in this amount of $2,773.64, I believe you testified, in your operating statement for the year ended July, 1932?

A. There is a total of $2,874.47—there are two items, one in customers expense and the other in general expense.

Q. That is the reserve set up for that period?

A. That is the amount charged on the company's books to general expense and customers expense for the provision for bad debts.

Q. And the actual uncollectibles for that period were in excess of those amounts?

A. Yes, although they all did not originate in that period; some of them went back as far as 1929 and 1930.

* * * * * * *

Q. Well, what I asked you was whether or not you considered the amount set up in this reserve of $2,773.64 as being a fair and reasonable approximation of the uncollectible accounts for that period.

[fol. 456] A. From past experience of the company, as I testified, the reserves that they had set up prior to July 31, 1932, were not ample to care for the accounts they charged off during that year, and for that reason I am inclined to believe that the reserve as set up by the company is not excessive.

Q. Now then, why did you include that amount in the heading of questionable items on page 12 of Plaintiff's Exhibit 8? Does that represent your judgment?

A. Yes, it is questionable in that in rate controversies it is an item that is subject to controversy, and in order that the Commission and the courts or whoever might review these exhibits might know the item was there, I set out in that schedule those items which in my opinion were subject to some controversy in a rate controversy.

Q. Well now, not going into the matter of what is allowed or disallowed in rate controversies, but stating your judgment as an accountant, I believe your testimony has been that you do not regard that figure as excessive?

A. That is my testimony.

Q. And then it is your accounting judgment, that figure not being excessive, is properly included among the operating expense items?

[fol. 457] A. Mr. Coates, you realize——

Q. I am asking you for your accounting judgment.

. . . . . .

A. About ninety-nine per cent of these questions can't be answered "yes" or "no".

Q. Well, I am not trying to pin you down to a "yes" or "no" answer, but I don't want you to get on to what is proper for this Court or this jury to allow in a rate case. I am asking for your accounting judgment about a matter, Mr. Lewis, which is my concept of what is admissible testimony.

The Court: Listen: You forget what my judgment might be or the jury's judgment or anybody else's, but give your judgment about what ought to be done; that is what he is asking for.

A. I can't give that judgment except with certain qualifications, because this exhibit was not prepared to reflect the earnings of the company for the stockholders; it was not prepared for any purpose except to put figures before a Commission or a Court, and for that reason items which in my accounting practice I would say are fair charges to operations must be treated a little differently in that respect.

Q. Now, that is just your opinion about it?

[fol. 458] A. Yes, that is my opinion.

Q. Now, in the revenues reflected in the operating statement for the year ended July, 1932, there are amounts of bills sent but not collected, are there not, Mr. Lewis?

A. Well, not literally. Included in the revenues are the total amounts billed to the customers.

Q. Yes, sir.

A. Some of that may have been uncollected and some of it has been collected; some of it has possibly been charged

off. But that amount represents the total amount charged customers.

Q. Represents the total amount charged to customers, and does not purport to represent the total and exact amount collected?

A. It does not.

Q. Then in your experience in examining the business transactions of concerns of this sort as reflected by their books it does include some accounts which have not been paid?

A. I am sure that it includes some amounts which have not been paid.

• • • • • • •

[fol. 459] Q. Well, have you ascertained by analysis of this Defendant's Exhibit No. 3, for the twelve months period ended December, 1933, and a comparison with Plaintiff's Exhibit No. 8, wherein the principal differences lie between those exhibits • • •?

A. Some of it would be in the top figures and some would be in the methods of allocation, and some would be eliminations. As I said, I have made the comparison of the items shown on page 1 of Exhibit 3, but I have not made it of the sub-accounts, for the reason that I did not extend those sub-accounts in percentage allocations.

Q. Well, have you carried the analysis far enough so that in the case of each expense account as shown on page 1, you can state whether the difference between the figures which you derived and the figures which are set forth in the Company's books are due to bases of allocation or elimination, or both?

A. I think I can give you within a small figure the exact differences, if that is what you want.

Q. And what occasioned it?

A. Yes, sir.

• • • • • • •

A. The first item of Gas Purchases shown by Defendant's Exhibit 3—we will call it Production Expense, shown by [fol. 460] Defendant's Exhibit 3, to be $21,111.61, in Exhibit 8 the corresponding figure is $14,997.10.

• • • • • • •

A. The difference is $6,114.51. That difference is brought about, first, by a difference in the rate used for Gas Purchases in Defendant's Exhibit——

Q. How much is attributable to that, do you know?

• • • • • • •

A. Defendant's Exhibit 3 computed Gas Purchases at a rate of five cents per thousand cubic feet. I have used a rate of $.04257 per thousand cubic feet, or 4.257 cents.

Q. All right.

A. The testimony indicated that in Defendant's Exhibit 3 there was purchased for resale within the city limits of Laredo 355,623 M. C. F. The difference in that rate used is $.00743, which, applied to the volume of 355,623 M. C. F., gives us $2,642.27.

• • • • • • •

A. The difference brought about in here by the difference in the rate used is $2,642.27. Defendant's Exhibit 3 includes as purchased gas expense for that one-cent gathering charge in the Carolina-Tex field $3,422.53, which I have not included [fol. 461] in my Gas Purchases expense. There is an unaccounted for difference of $49.71——

• • • • • • •

A. Making a total difference of $6,114.51.

• • • • • • •

Q. And have you before you the total amount of operating expenses for the year 1933, exclusive of the well head price of gas attributable to distribution system operations?

A. Yes, I have that.

Q. And likewise the transmission system operations. If you give those two figures, identify them.

A. Do you want the top figure, or the amounts allocated to Laredo?

Q. Amounts allocated to Laredo—that is, exclusive of gas purchases expense.

A. I will give you the distribution system operations first.

• • • • • • •

A. I will have to make a computation * * * Total operating expense distribution system properties, exclusive of gas purchases, amounts to $67,022.74.

The Court: Repeat those figures.

A. $67,022.74.

[fol. 462] Mr. Bobbitt: That is for 1933?

A. Yes, sir.

Q. Now, for transmission, likewise exclusive of your figure for gas purchases.

A. Total operating expenses of the transmission system properties, exclusive of gas purchases, $11,278.62.

Q. Now, I had requested you about the time we recessed to make a comparison between the operating expenses by accounts for the year 1933 as shown in Plaintiff's Exhibit 8 with the operating expenses by accounts with as much break-down as you have, as reflected by Defendant's Exhibit 3, explaining the differences in so far as you are able to explain them.

* * * * * * *

A. The next expense caption appearing in Defendant's Exhibit 3, page 1, is transmission expenses, $10,131.28. That figure, in conformity with the book classification accounts, would have two sections: transmission system operations and transmission system maintenance. Referring to page 2 of Exhibit 3 for comparative purposes, I have considered the first six sub-accounts as transmission system operations and the remaining accounts under the section as transmission system maintenance, which conforms to the [fol. 463] classification used on the company books. That reclassification gives us, then, transmission system operations $6,729.62 and transmission system maintenance $3,401.66. In Plaintiffs' Exhibit 8 transmission system operation is shown at $2,511.69 and transmission system maintenance $1,645.39. Those are the comparative figures.

* * * * * * *

A. The next item is New Business Expense. The New Business Expense shown on Plaintiffs' Exhibit 8 amounts to $2,805.19; the New Business Expense as shown by Defendant's Exhibit 3 amounts to $6,077.61, or a net difference

of $3,272.42. In the Defendant's Exhibit 3 the item of $6,077.61 New Business Expense is made up as follows: Laredo District New Business Expense, $3,288.22; San Antonio District New Business Expense, $21.15; Houston General Office New Business Expense, $2,768.24. There is included in Plaintiffs' Exhibit 8 only an allocated part of the Laredo District New Business Expense. The San Antonio District is a transmission district, and could not have customers within the city limits of Laredo, and for that reason I have not included any part of the San Antonio District New Business Expense within the city limits of Laredo.

Q. That is the item of twenty-one dollars and——

[fol. 464] A. $21.15. The Houston Office General Expense I have not allocated to Laredo for the reason that Laredo, being an old established town, should not share in New Business Expense to the extent that the new distributions systems that have been put in during the year. So that I feel that New Business Expenses of the Houston General Office should be allocated to those districts where new distribution plants have been set up during the period under review, or immediately prior thereto. Those two items account for $2,789.30 of the difference. The net difference is $3,272.42, leaving an unaccounted for or unlocated difference of $483.03, which is all due to difference in allocation factors.

Q. All right; go ahead.

A. The next item is general office general expense, which is included on defendant's Exhibit 3 at $39,456.00. General office and general expense is shown on Plaintiff's Exhibit 8 in the amount of $27,876.42, or a net difference of $11,579.58. This difference is brought about first in the district general expense of the Laredo district. Defendant's Exhibit No. 3 includes $9,092.97, allocated to Laredo, whereas Plaintiff's Exhibit No. 8 includes $8,183.06 or a difference of $909.91. [fol. 465] This difference is due entirely to difference in the allocation factors. The San Antonio district——

Q. I thought for general expense you used the bases of apportionment set forth in Defendant's Exhibit 2?

A. That is in the general office general expense, but not in the district general expense. The San Antonio district general expense allocated to Laredo in Defendant's Exhibit 3 amounts to $898.29 as compared to $899.45 in Plaintiff's Exhibit 8. In other words, Plaintiff's Exhibit 8 contains $1.16 more San Antonio general expense than Defendant's

Exhibit 3. General office expenses I can not definitely tie down the differences until I have some information which has been requested, but I can give you the approximate figure.

Q. All right.

Mr. Bobbitt: Pardon me—when did you request that information, Mr. Lewis?

A. I requested it about ten days ago.

Mr. Bobbitt: And the gentlemen agreed to furnish it to you, didn't they, and will furnish it, I am sure?

A. Yes, they will furnish it, but I have not received it at this time.

Q. What is that information?

[fol. 466] A. Mr. Womack was asked to furnish the top starting figure of general expense charged to general expense on the general office books, account 113-38-2, and his adjustments to that total and his allocations, but I can give you the approximate differences here, as it is.

Q. All right; go ahead.

A. The transmission system general expense allocated from the Houston general office to the City of Laredo in Defendant's Exhibit 3, amount to $6,911.32. The Houston general office general expenses allocated to Laredo in Plaintiff's Exhibit 8 amount to $4,289.02, or a net difference of $2622.30. I have eliminated some general expense items in my allocation to Laredo which approximate that figure.

Q. Please state what they are.

A. I have eliminated from general expenses allocated from the general office of the transmission system—I will give you the net figures which have been allocated or would have been allocated to Laredo, had not the elimination been made, in order to reconcile with Defendant's Exhibit 3. I have eliminated law expenses in the amounts of $619.33 and $296.25 which represent the amounts cleared through [fol. 467] the clearing accounts 150 and 154. I have eliminated management fees in the amount of $648.82. I have eliminated valuation and regulatory commission expense in the amount of $440.66. Donations, in the amount of $36.53. Provision for uncollectible general office accounts, in the amount of $469.13. Another item of valuation and regulatory commission expense in the amount of $411.55. Compressor station expense in the amount of $139.22.

Q. Compressor station expense?

A. Yes, there are no compressor stations on the lines serving Laredo.

Q. And how much was that figure?

A. $139.22.

Q. This is for the year 1933?

A. Yes. There are some direct charges to account 113-38-2 after the clearings for additional general office bad debt reserves and legal expense, and I have eliminated the amount of $161.82.

Q. For both?

A. For those direct charges, yes. I do not have the analysis here, but it is all provision for bad debts and additional legal fees that were set up after the books were closed. Then there are two items of franchise require-
[fol. 468] ments, in the amounts of $15.86 and 65 cents, which I have eliminated. The total eliminations of the transmission district amount to $3,239.82. In Defendant's Exhibit 3 there was eliminated the item of provision for uncollectible accounts which on my computations would have been $469.13; so that my eliminations exceed the eliminations made in computing Defendant's Exhibit 3 in the amount of $2,769.69. The net difference in the transmission system general expense prorated from the general office amounts to $2622.30 so that all of the difference except approximately $147.00 has been accounted for.

I believe I stated that there was a difference of $8048.53 in the amount of distribution system general expense prorated from the general office. That difference is also explained principally by the elimination of certain items which I will give you. Law expense $1,745.19 and $1,551.28. Supervision and consultation, fees, $1,828.31. Valuation and regulatory commission expense, $1,238.47 and $1,079.80. Donations, $102.93. Provision for general office uncollectible accounts, $1,321.97. The total eliminations for the distribution system amount to $9,323.93. In the preparation of Defendant's Exhibit 3, there was eliminated from the
[fol. 469] general expense the item of uncollectible accounts, which under my computation would amount to $1,321.97.

Q. That is the general office?

A. Yes. Making a net elimination which was not made in Defendant's Exhibit 3 of $8,001.96, which accounts for

all except $47.00 of the difference. I believe that concludes the explanation of differences.

* * * * * * *

Q. Now, Mr. Lewis, why did you eliminate from transmission system general and distribution system general the item of law expense?

A. Because the items of law expense were some several thousand dollars more than they have been in prior years, and I have connected that law expense naturally with the valuation and regulatory commission expense.

Q. Did you find that any of the law expenses distributed to these properties had not been actually incurred?

A. I did not even check to see whether they had been incurred or not.

Q. And why did you eliminate the valuation and regulatory commission expense items?

A. Because that is an unusual expense that would not normally be incurred every year.

[fol. 470] Q. Did you attempt to ascertain the total amount of valuation and regulatory commission expense and law expense attributable to this rate controversy?

A. I did not. I might add, Mr. Coates, that that expense has been charged to a number of accounts on the company books, both capital and operating accounts, so that to determine the total that was paid for this particular case, I do not believe you would ever get it all together, and I believe that there will still be left in the accounts a considerable part of the expense of this case.

Q. But did you make any attempt to first ascertain the total amount of law and regulatory commission expense which had been incurred in connection with this investigation, and then distribute that expense over a period of years?

A. No, sir; I have not.

Q. And do you know whether the amounts which you have eliminated here amount to say one-tenth or one-fifth of the total law and regulatory commission expense?

A. No sir.

Q. Incurred in connection with this investigation?

A. No sir.

[fol. 471] Q. But as I understand it, what you have eliminated is all the law and regulatory commission expense which you found charged for this particular period?

A. In this particular general office account.

Q. In the general office account. Then you have made no attempt to do what is referred to in accounting parlance, to determine the amount of the law and regulatory commission expense and spread it over a period of years so it might be amortized by annual charges to operating expenses?

A. No. As I stated, that expense has been charged to numerous accounts on the books of the company, both operating accounts and capital accounts, and it would have required a considerable period of time to collect it all and determine just what the total is, and there is still in these accounts some of the expense attributable to this case.

Q. How much?

A. I don't know how much, but there are items of traveling expense and some of the salaries of the general office employees whose time has been devoted to this, and it would not be practical to attempt to collect it all.

Q. But you are unable to state how much is left in the operating expenses for this particular period which would be attributable to this particular investigation?

[fol. 472] A. Yes, I am unable to say that.

Q. Now, isn't it a fact Mr. Lewis, that that part of regulatory commission expense or valuation expense which was attributable to the making of the inventory of property in this case was the expense which was capitalized?

A. I don't know whether it would include all of the inventory expense or not, but I know there was a considerable portion of that inventory expense capitalized.

Q. And didn't you find the expenses attributable to mapping and inventory was capitalized on the theory that an inventory was a part of the property of the company?

A. As I stated, I do not know that the mapping and inventory expense was the portion that was capitalized. I know some part of it was capitalized, but I do not know what part was capitalized and what part was charged to operating expenses.

Q. You may have answered this question, but I will ask it once again and then leave it. You are unable to state whether the item regulatory commission expense and legal expense shown in this statement amount to less than or more than one-tenth of the total legal and regulatory commission expense attributable to this investigation?

A. No, I can not answer that.

[fol. 473] Q. And by the statement, I mean the defendant's Exhibit 3, being the operating statement for the year 1933.

A. I don't know what portion it would be.

Q. Do you regard it as proper accounting practice and recognized accounting practice to take an item such as regulatory commission expense, including both legal and other costs of a regulatory investigation, and spread that expense over a period of years and charge it to operating expenses in equal amounts over that period of years?

A. I consider it good accounting practice to take any unusual item and amortize it over a period of years, and I consider this an unusual item.

Q. Then if actually the amounts charged here for this operating period amount to, say, one-tenth of the total regulatory commission expense in connection with this investigation, you regard that as in accordance with good accounting practice?

A. Well, I would not tie myself to one-tenth.

Q. Well, one-fifth?

A. Well, I would not tie myself to that, either.

Q. What period of years would you take?

A. That is, for rate purposes—that is a matter for the courts to decide.

[fol. 474] Q. I agree with you entirely on that, and I am asking you about the correct and approved accounting practice.

A. The correct accounting practice would be to charge it off over a specified period, and ten years would be somewhere in the neighborhood of the correct period to charge.

* * * * * * *

Q. Did you or did you not state that after these properties, including the Jennings-Roma line and the Jennings-Pescadito line and the Carolina Texas-Laredo line were transferred, that those lines were set up and evaluated on the books of the United Gas Public Service Company at $934,798.02?

A. I stated that the journal voucher taking up the properties on the books of the United Gas Public Service Company charged fixed capital account in the amount of $934,000.00 some odd.

Q. And is it your testimony that all these properties were carried on to the books of the United Gas Public Service Company at only $934,000 plus?

A. I did not analyse all of the fixed property accounts of United Gas Public Service Company, but from the information furnished me by the accounting department and the construction accounting departments, that is the total [fol. 475] value at which they were taken over. Then there was an addition to that cost of some $55,000.00 later in the year.

Q. What was the information furnished you, Mr. Lewis?

A. It was a transcript of the fixed capital accounts, as affecting the old District 70 of the old South Texas properties.

Q. And did you go through that carefully?

A. The transcript as furnished to me?

Q. Yes.

A. It had the same balance——

Q. I say, did you go through it carefully?

A. It did not necessitate going through at all. It was there in schedule form of the items enumerated and I made no verification of it whatever.

Q. And did that item of $934,000.00 plus, include the Jennings-Roma line?

A. That was my impression. As I said, I asked them for this information in regard to all the old South Texas Gas Company properties, and that was the information furnished me, and I made no further verification of it, but it was my impression that it included all of the old South Texas Gas Company's properties.

[fol. 476] Q. And I believe you stated that the Jennings-Roma line—the cost of that line showed on the books of the South Texas Gas Company at $848,232 and some cents?

A. That was the first journal voucher, setting up the cost, and there were some later additions to it.

Q. Have you a description of that journal voucher, a copy of which was furnished to you, showing this entry of $934,000?

A. The description on the voucher setting up the properties recites that it is "to record acquisitions of properties, assets, and assumption of liabilities of South Texas Gas Company, under agreement dated October 1, 1932."

Q. What is the number of that?

A. I have here "J 10-156.

Q. Could that be Number "J 10-157"?

A. It is possible that I might have the wrong number here. That is just a memorandum that I have on the working paper.

Q. Did you examine that Journal Voucher sufficiently to ascertain whether at the time these properties were transferred from the South Texas Gas Company to the United Gas Public Service Company whether the United Gas Public Service Company held any of the common stock of the [fol. 477] South Texas Gas Company?

A. As I stated, I made no verification whatever of the Fixed Capital items.

Q. Did you ascertain whether at that time the United Gas Public Service Company likewise held bonds of the South Texas Gas Company?

A. I believe they did. I made no investigation along that line, though.

* * * * * * * *

Q. Did you ascertain whether the United Gas Public Service Company held any of the common stock of the South Texas Gas Company?

A. No; I did not.

Q. Did you ascertain whether the United Gas Public Service Company held any of the bonds of the South Texas Gas Company?

A. I am sure they held some of them, although I did not make any investigation to ascertain the amounts.

Q. You say you examined the voucher in all its parts?

A. No; I didn't say that I examined it in all its parts; I said "a copy here with this voucher reference on it."

Q. Does the copy that you have disclosed any common stock of the South Texas Gas Company?

[fol. 478] A. There is an item here of re-acquired credits. I did not attempt to reconcile the Journal entries.

Q. What does your copy show there with reference to common stock of the South Texas Gas Company held by United Gas Public Service Company at the time of the transfer of these properties?

A. There are not entries to capital stock reflected in this entry.

Q. What does it show with reference to the six and a half per cent first mortgage bonds of South Texas Gas Company held by United Gas Public Service Company?

A. There is an item on this journal voucher, a credit to long-term debt of $3,715,000.00. I don't know whether that is assumption of the old South Texas Gas Company bonds, or what the nature of it is.

Q. Is it your testimony here that the properties of the South Texas Gas Company were written down and entered on the books of the United Gas Public Service Company at $934,798.02?

A. It is my testimony that at the time the properties were transferred they were charged to the Fixed Capital accounts on the books of the United Gas Public Service Company, as per the Journal Voucher, $934,798.02.

[fol. 479] Q. And you give that as the result of your examination?

A. It is also the same figure reflected in the transcript of the account furnished to me, which purported to reflect all of the properties of the old South Texas Gas Company.

Q. It is your testimony here from your examination of this Voucher that this property was set up on the books of the United Gas Public Service Company at $934,798.02?

A. The voucher that I have seen and the transcript furnished me indicated that was it. There might have been some records that I did not see.

Q. You say that your notes there show no bonds?

A. I said that there was a credit on this Journal Voucher to long-term debt of $3,715,000.00. I don't know whether that is the old South Texas Gas Company's bonds that were assumed, or whether it was some additional bonds issued, or what. I made no effort to verify or analyze the entry, and when I asked for the reconcilement between the figures I was advised that such reconcilement was not available.

Q. Who advised you that?

A. I was advised that by the Accounting Department, and in going over this, particularly when I saw this entry and could not see through it all, I went to Mr. Womack, whom [fol. 480] I assumed had gone over the same accounts.

Q. Were you shown Journal Voucher J 10-157?

A. I don't know whether I was or not. If I saw the voucher I might know whether I had seen it.

* * * * * * *

Q. Now, Mr. Lewis, since the noon recess have you any explanation to make, other than that contained in the record, with reference to your testimony with respect to the figure of $934,798.02, which you identified as the amount set up on the books of the United Gas Public Service Company, representing the book costs of the transmission properties formerly belonging to South Texas Gas Company?

A. I have no other explanation to make, other than the transcript furnished me of the properties purporting to be the old South Texas area contained that figure, and in support of that I have testified that the Journal Voucher made at the time the properties were transferred charged the Fixed Capital Account with that amount.

Q. Did the transcript and this Journal Voucher indicate to you, using your judgment as an accountant, that that was the value of these properties fixed by the United Gas Public Service Company on its books?

A. No; I don't know whether that was the amount set [fol. 481] up for appraised value, or the amount purporting to be the costs, or addition to costs; and as I testified, I made no attempt to verify the item at all.

Q. Is it your testimony that it is either an appraised figure or the amount set up as costs?

A. It is my testimony that that is the amount that was charged to Fixed Capital at the time that the properties were transferred.

Q. And the entire amount?

A. That is the total amount that was charged at the time the properties were transferred, with the exception there was some fifty-five thousand dollars charged later.

* * * * * * *

Q. Have you anything in this operating statement for the year 1933 for gathering expense for the Carolina-Tex field?

A. No.

* * * * * * *

Q. Now, is the elimination of the amounts charged and paid for the use of the gathering system in the Carolina-Tex Field, does that represent your own judgment, Mr. Lewis?

A. Yes; after taking all the facts that I could find into consideration, I eliminated the gathering charge paid to the [fol. 482] Southern Gas Company in the Carolina-Texas Field.

* * * * * * *

Q. Mr. Lewis, why didn't you make an operating statement for the calendar year 1932?

A. Why didn't I?

Q. Yes, sir.

A. Because the period ending July 31, 1932 was selected for the purpose of the hearing before the Railroad Commission, and there was no further examination made until about the first of December, 1933, and we took the last twelve months period available at that time, and did not use the calendar year ending December 31, 1932.

Q. And you have made no examination of the Company's books for the period from July 31, 1932 to the end of 1932, have you?

A. Yes; in connection with the year ended October 31, 1933, I examined the last two months of 1932.

Q. Now, for the purposes of identification, if one would want to know the operating expenses attributable to transmission system operations, in your operating statement for the twelve months ended July, 1932, that can be found on page 5 of Plaintiff's Exhibit 8, can it not?

A. That is correct.

[fol. 483] Q. And if one wants to know your operating expenses attributable to distribution system operations for the twelve months ended July, 1932, that can be found on page 9 of Plaintiff's Exhibit 8, can it not?

A. Yes, sir.

* * * * * * *

Q. All right. Now, Mr. Lewis, turning to Plaintiff's Exhibit 4, how much did you deduct from reserve accruals to represent amounts accrued for the Jennings-Roma line?

A. At the time the properties were transferred to the United Gas Public Service Corporation on October 21, 1932, I had for depreciation allocated to the Jennings-Roma line, $56,590.74.

Q. Now, you show that the net additions to property, by which I take it you mean additions less retirements, at the

time the properties of the Border Gas Company were transferred to South Texas Gas Company, of $1,006,512.13, that date being April 10, 1928?

A. That is correct.

Q. And that as of the time these properties, eliminating the Jennings-Roma line were transferred to United Gas Public Service Company, the historical cost of the property, being net additions, was $1,049,735.38?

[fol. 484] A. That is correct.

Q. And that is gross additions less retirements?

A. Yes. In connection with the foot note—during the year ended July 31, 1932, there had been two substantial retirements which were credited out of fixed capital and the replacement was not charged into fixed capital until some time after the transfer of the properties to the United Gas Public Service Company.

Q. Well, have you picked up that replacement in your figures?

A. Yes, at a later date.

Q. And is that replacement picked up in the figure showing the net historical cost of $1,153,232.98 as of December 31, 1932?

A. That is correct.

Q. And is likewise carried into the figure showing historical cost of properties as of December 31, 1933, of $1,151,993.65?

A. That is correct.

Q. And all of these eliminate from consideration the Jennings-Roma line?

A. That is correct.

Q. And likewise any amount in the opening entry to this account, except the $166,000.00 figure which was testified [fol. 485] to by Mr. Kinney?

A. That is correct.

Q. Did you go over these books for any period prior to April 10, 1928?

A. No, sir, I did not.

Q. Well. during the period covered by you, has any amount been included in here for materials and supplies?

A. Yes.

Q. What amount?

A. Well, to give you a detail of the amounts charged in here——

Q. I am talking about what the materials and supplies were carried on hand by an operating company.

A. You mean the inventory of that?

Q. Yes.

A. No, there is nothing in here for that.

Q. Is there any amount included here for cash working capital?

A. No, sir.

* * * * * * *

Redirect examination.

Questions by Mr. Bobbitt:

* * * * * * *

Q. In connection with that item of advertising expense [fol. 486] you were interrogated about, and you made that elimination—as I understand you were asked the question whether or not that should not be allowed in there, because it was an effort to hold old customers as well as to try to secure new ones, and you testified you made certain eliminations of that item.

* * * * * * *

Q. Why did you make that elimination?

* * * * * * *

A. I eliminated the general office new business expense applicable to the transmission system——

The Court: He is talking about the advertising.

A. The item of advertising is included in the new business expense, so that anything I say about new business expense includes advertising. Now, I eliminated the general office new business expense applicable to the transmission system for the reason that the transmission system does not have any industrial customers within the city limits of Laredo, and have eliminated the new business expense applicable to the distribution system, for the reason that I feel the general office new business expense should be applied to the new distribution systems rather than to the old systems, like Laredo.

* * * * * * *

[fol. 487] Questions by Mr. Lange:

Q. Mr. Lewis, referring to Defendant's Exhibit 5, and particularly to Graph No. 3, we inquired of Mr. Womack to supply the volume of gas covering the four periods of June 30, 1929, June 30, 1930, June 30, 1931, and July 31, 1932. Has Mr. Womack supplied those figures?

A. Yes, sir.

Q. Do you have them there?

A. You refer to the volume?

Q. Yes, of the non-recurring revenues.

A. Yes, I have those.

Q. Will you please give them to the stenographer?

A. The volumes of gas included in Defendant's Exhibit 5 applicable to the non-recurring revenues as given us by Mr. Womack: for the year ended June 30, 1929, 356,623 M. C. F.; for the year ended June 30, 1930, 485,359 M. C. F.; for the year ended June 30, 1931, 295,139 M. C. F.; for the year ended July 31, 1932, 76,962 M. C. F.

Q. Those figures represent the volume of gas as indicated in Defendant's Exhibit 5, Graph 3, the stacks beginning at the left, the top of the stacks in white, do they not?

[fol. 488] A. The white portions of the stacks in Graph No. 3 represent non-recurring revenues. The figures I have just given represent the volumes of gas sold, which reflect the revenue shown in the white portion of the stacks in Graph No. 3.

Q. Now, referring to Plaintiffs' Exhibit 8, page 1, have you with the use of those figures furnished you by Mr. Womack adjusted first the gas sales appearing under Operating Revenues on your exhibit on page 1—Exhibit 8, page 1—gas sales?

A. I have computed what the total operating revenues would be after elimination of the non-recurring revenues, or the revenues designated by defendant's exhibit as non-recurring revenues.

Q. Have you that by years for the periods reflected in Exhibit 8?

A. Yes.

Q. Can you give us that for each year?

A. Yes.

* * * * * * *

Q. Will you give us those figures by years, Mr. Lewis?

A. The gross operating revenues as shown by Plaintiffs' Exhibit 8, after eliminating the items referred to in De-
[fol. 489] fendant's Exhibit 5 denominated non-recurring revenues, would be as follows: For the year ended June 30, 1929, $222,516.93; for the year ended June 30, '30, $237,-989.24; for the year ended June 30, 1931, $206,577.17; for the year ended July 31, 1932, $179,059.79; for the year ended December 31, 1933, $158,768.22.

Q. Now, will you give us the operating expenses, with the gas purchases eliminated, covering the alleged non-recurring revenues?

* * * * * * *

A. If the gas purchases pertaining to the gas sold to non-recurring customers were eliminated from Plaintiffs' Exhibit 8, the operating expenses would be: For the year ended June 30, 1929, $118,368.34; for the year ended June 30, 1930, $137,731.40; for the year ended June 30, 1931, $112,370.46; for the year ended July 31, 1932, $109,973.16; for the year ended December 31, 1933, $93,298.46.

Q. Now the net return for each year before depreciation and income tax?

A. The net return before depreciation and income tax, after elimination of the non-recurring revenues, or the items designated by Defendant's Exhibit 5 as non-recur-
[fol. 490] ring revenues, and after elimination of the purchase price of the gas represented in those non-recurring revenues, would be: $104,148.59 for the year ended June 30, 1929; $100,257.84 for the year ended June 30, 1930; $94,206.71 for the year ended June 30, 1931; $69,086.63 for the year ended July 31, 1932; $65,469.76 for the year ended December 31, 1933.

* * * * * * *

Q. Do you have those work-sheets?

A. The purchase invoices indicate that during the year ended July 31, 1932, there was only one month in which gas was delivered to the Laredo line from wells in the Jennings ar a.

Q. What month was that?

A. That was the month of August, 1932.

Q. Now, for the period—the year ended December 31, 1933. Oh, before we get to that, have you got the volume of that one delivery in M. C. F.?

A. The volume was 14,234 M. C. F., which was delivered from the Cuellar Brothers No. 1 Well. During the year ended December 31, 1933, there was delivered to the Laredo line at Pescadito Junction 27,431 M. C. F.

Q. Now, do you have the monthly deliveries for each—[fol. 491] have you the deliveries for each month?

A. Yes, I think I have that. There was delivered at Pescadito Junction to the Laredo lines in May, 1933, 1,293 M. C. F.; in April, 1933, 1,694 M. C. F., in March '33, 1,347 M. C. F., in February, 1933, 1,472 M. C. F., January, 1933; 1,638 M. C. F.

Q. Those were the total deliveries——

A. Just a moment.

Q. All right.

A. In November, 1933, 8,176 M. C. F., and in December, 1933, 11,811 M. C. F. That is all I have.

* * * * * * *

Recross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. You examined, for the purpose of determining gas deliveries through the Jennings-Pescadito line for the twelve months ended July, 1932, the purchase invoices, did you?

A. The invoices which were made to the South Texas Gas Company by the company selling the gas.

Q. Is it your testimony that no gas came through the Jennings-Pescadito line for Laredo in the month of March, 1932?

[fol. 492] A. The purchase invoices of gas do not indicate any deliveries; there might have been some.

Q. Now, did you examine the charts on that Pescadito check-meter, or the records of such charts in the Measurement Department?

A. No, I didn't. I confined my examination in those years where the purchase invoices were rendered to the information contained on the invoices.

Q. And made no examination of the records in the Measurement Department to see whether any gas passed through that Pescadito check-meter in the month of March, 1932?

A. I didn't make any check at all of the Pescadito check-meter that year.

Q. Your attention was directed to the records in the Measurement Department as early as October or November, 1932, was it not, Mr. Lewis?

A. It was necessary this last year to examine those records, for the reason that since the South Texas Gas Company had merged with the United, and the Texas Border Gas Company also had merged with the United, the deliveries of gas to the town borders were no longer billed through invoices; so that in order to get the volumes delivered I had to check the Chart Department to get the information.

[fol. 493] Q. For what period?

A. For the year ended December 31, 1933.

Q. But you did not check it for the twelve months ended July—didn't check the records in the Measurement Department for the year ended July, 1932?

A. No, sir.

* * * * * * *

[fol. 494] HENRY E. ELROD, a witness for the Plaintiffs, being by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Please state your name, age, your present place of residence and your occupation.

A. My name is Henry E. Elrod. I am 56 years old. I live in Houston, Texas, and I am a consulting engineer.

Q. Is that your occupation at the present time?

A. Yes.

Q. How long have you pursued that profession or occupation?

A. Practically since my graduation from school; or rather, I will modify that by saying that I graduated from school in 1901, and I followed my profession until 1912, when I entered the practice of my profession as a consulting engineer.

Q. What degrees, if any, do you hold, Mr. Elrod?

A. Bachelor of Science, in Electrical Engineering.

Q. From what school did you receive that degree?

A. From the Agricultural & Mechanical College of Texas.

Q. Will you state what has been your experience, or what character of work you have been engaged in from 1912, when you state you began actively to work in your profession?

[fol. 495] A. Municipal engineering. Municipal utilities, such as water works and sewers, and light and power plants, and appraisals and street paving, and every type of engineering that had to do with municipal welfare.

Q. Has that work been done entirely in behalf of municipalities or privately owned interests, as distinguishing municipal from privately owned interests.

A. It has always been in the public interests—that is, for the municipalities as against private interests.

Q. Will you state the projects and the character of the projects that you had occasion to do this work on or for, in that period beginning with 1912 to now?

A. Since 1912 and to the present time, I have constructed or designed and supervised the construction of thirty water works systems, thirteen dams for water supplies, eleven reservoirs for impounding water, thirteen water filtration plants, nine deep wells, ten water supply reports, twenty-five sewer systems, forty-seven sewage treatment plants, thirty-four municipal paving programs, four county highway systems, the appraisal of thirty-four public utilities, sixteen geologic reports, eighty-four technical reports of various characters, totaling 324 engineering commissions. [fol. 496] The details of the work on water works systems for various towns in Texas and California and sewer systems, I estimate I supervised the construction—not all personally of course, but generally under my supervision—of approximately three million lineal feet of trenching and backfilling or over five hundred miles. The dams I built consisted of earth works, concrete work, steel work and so forth. The public utility appraisals, were made as follows:

At Alba, Texas, water works system, for purchase. At Amarillo, Texas, water and light power company, for rate purposes—that was a federal case; that is, the case found its way into the federal court and I testified in that case. The appraisal of the Brunner, Texas, water works system for purchase by the City of Houston.

Coleman, Texas, the sewer system, for purchase.

Galveston, Texas; the Galveston electric and street railway properties, for rate purposes.

Brush Electric Company, at Galveston, light and power properties, for rate purposes.

The Galveston Gas Company, which was an artificial gas company, for rate purposes.

The Galveston Wharf Company, for purposes of taxation.

[fol. 497] Gorman, Texas, water works system, for purchase.

Honey Grove, Texas, water works system, for purchase.

Houston Gas & Fuel Company, for rate purposes.

The Southwestern Bell Telephone & Telegraph Companies for rate purposes.

The Home Telephone Company, automatic telephone, at Houston, for rate purposes.

Houston Light & Power Company, for rate purposes.

Houston Electric & Street Railway Company, for rate purposes.

Hubbard, Texas, water works system, for purchase.

Jacksonville, Florida, investigation of properties and operation of Jacksonville, Florida Municipal Light & Power Company, for City of Houston, for comparison.

Lockhart, Texas, water works system, for purchase.

Longview, Texas, Longview Light & Ice Company, for rate purposes.

Malone, Texas, water works system, for purchase.

Merkel, Texas, Electric Light & Power Company, for rate purposes.

Paducah, Kentucky, water works, for rate purposes.

Port Arthur gas works, for purchase; and that was an artificial gas works.

[fol. 498] Ranger, Texas; Ranger Water Company, for purchase.

San Angelo, Texas, electric light and water works, for purchase.

San Marcos, Texas; San Marcos Utility Company, for rate purposes, and that was water works.

Taylor, Texas; the sewer system, for purchase.

Temple, Texas; Temple Gas Light Company, for rate purposes, and that was an artificial gas plant.

Tyler, Texas; the sewer system for purchase, and the water works system for purchase.

Wichita Falls, Texas; the Wichita Falls Gas Company, for rate purposes.

Dallas, Texas; the Dallas Telephone Company for rate purposes.

The total values involved in the above mentioned appraisals were approximately $100,000,000.00.

Q. Mr. Elrod, you stated that you are engaged in that work or profession at this time?

A. Yes.

Q. Were you so engaged during the years of 1931 and 1932?

A. Yes.

Q. And also in 1933.

A. Yes.

[fol. 499] Q. Just state briefly what work, or when you began your work in connection with this Laredo rate case, and what you did.

Mr. Coates: May I ask Mr. Elrod a few questions along the line of his qualifications?

Mr. Lange: Yes, sir.

The Court: I think it would be permissible, yes.

Questions by Mr. Coates:

Q. Mr. Elrod, have you ever engaged in any responsible capacity in the operation of a natural gas property?

A. No sir.

Q. Have you ever been engaged in a responsible capacity in constructing a natural gas property?

A. No, sir.

Q. And have you ever been engaged in a responsible capacity in the purchase of gas pipe or fittings?

A. No, sir.

Q. Mr. Elrod, you say you are a consulting engineer. Now are you an accountant?

A. No, sir.

Q. And you have had no experience as a practical operating man of gas properties?

A. No, sir.

[fol. 500] Q. Are you a lawyer?

A. No, sir.

Q. Then you qualify here simply as a consulting engineer?

A. Yes.

Mr. Coates: We have an objection, but we will make it at the proper time.

The Court: All right; go ahead, gentlemen.

* * * * * * *

Questions by Mr. Lange:

A. I was first employed by the City of Laredo, by contract, on February 17, 1932, to assist the City's engineer in the preparation of an appraisal of the properties of the Texas Border Gas Company and the South Texas Gas Company, which are units of the United Gas System. At that time, the appraisal had already been made by the City Engineer, and I was simply to act as consultant with him in connection therewith and its presentation at a hearing to be held before the Railroad Commission. My second employment by the City of Laredo, was in the month of October, 1932, at which time I was engaged to prepare a new apprraisal of the properties of the two companies just mentioned.

Q. And then what character of work, if any, did you do in connection with this appraisal.

[fol. 501] A. I prepared an appraisal of the properties, based upon an inventory that was prepared by Mr. Neff and composed with the company's inventory, so that the items of property were reconciled.

Q. Have you since that time prepared an appraisal of the properties serving Laredo?

A. Yes, I have. Late in November, I was called upon by the City.

Q. November of what year?

A. November of the past year, 1933; I was called upon by the City of Laredo to prepare a new appraisal on the basis of prices as of December 31, 1933, and I prepared that inventory—or rather, that appraisal.

Q. I will ask you whether this is the appraisal which you have prepared?

A. Yes, it is.

Mr. Lange: We desire to offer it in evidence.

Mr. Coates: One or two further questions, for the purpose of laying a predicate. Mr. Elrod, does the appraisal which you have identified and which you hold in your hand, represent your engineering estimate as to what it would

cost to reproduce similar properties, if built under existing conditions, at the present time?

[fol. 502] A. No, it does not. It purports to represnt what the present properties are worth, as of December 31, 1933. That is, the identical properties.

Mr. Coates: Does it purport to represent the historical cost of those properties?

A. No, sir——

. . . . . .

A. It does purport to show, or rather the properties were priced out in view of the history of the company. It is not a historical reproduction, however. It is priced out on the basis of prices as of December 31, 1933, in view of the history of the company as it existed from 1910 on.

(Defendant's objections to the introduction of plaintiffs' exhibit 9 because the witness Elrod was not shown qualified to make an appraisal of natural gas properties, because the exhibit was an attempt to vary and impeach the Commission's order sued upon by plaintiffs, and because the exhibit reflected neither reproduction cost nor historical cost, but purported to be the conclusion of the witness as to fair value, were all overruled; defendent excepts.)

[fol. 503] The following are pages 1800-1803, both inclusive, page 1806, and page 1865, from S. F. Vol. III.

[fol. 504] PLAINTIFF'S EXHIBIT No. 9

General Summary and Allocation

	Cost New	% Condition	Cost, New Less Depr.
Transmission System	$359,128		$263,063
Distribution System	597,736		470,488
Totals	$956,864		$733,551
Less:—			
Land, Leases & Rights-of-way	10,475		10,475
Balances	$946,389		$723,076
Materials & Supplies	19,744		19,744
Balances	$926,645	75.90	$703,332
Included with and incorporated in this amount, as "Expense of Purchase & Storage," and deducted as being excessive	$28,711	75.90	$21,792
Balances	$897,934		$681,540
Add back for Land, Leases & R. O. W.	10,475		10,475
Add for Reasonable Purchase & Storage	7,500		5,693
Totals	$915,909		$697,708

Plaintiffs' Exhibit No. 9—Continued

		Cost of Reproduction	
		New	Less Depr.
Less Items Already Allocated:			
Furniture & Fixtures	10,310		7,320
Auto & Equipment	5,807		1,724
Tools & Equipment	2,321		1,741
	$18,438		$10,785
Balance for Allocation	$897,471		$686,923
Allocated to Laredo, 85.27%	$765,274		$585,739
Add Items Already Allocated	18,438		10,785
Totals Allocated to Laredo	$783,712		$596,524
Preliminary & Organization, 2%	15,674		15,674
Engineering & Supervision, 2½%	19,593		14,870
Administration & Legal, 1½%	11,756		8,923
Taxes During Construction, ½%	3,919		3,919
Interest During Construction, 3½%	27,430		20,819
[fol. 505]			
Materials & Supplies	19,744		19,744
Working Cash, 45 days of Annual Operation Expense less Gas Purchases	9,788		9,788
Totals	$891,616		$690,261
$690,261			
[fol. 506] Summary:			
Transmission System of South Texas Gas Company		$359,128	$263,063
Distribution System of Texas Border Gas Company		597,736	470,488
Total		$956,864	$733,551

[fol. 507] Pages 1804-1805 of S. F. Vol. III omitted.

[fol. 508]

Summary

Distribution—Laredo

Property Inside City Limits

		Cost New	Less Depr.
Acct. 326	Land	401	401
Acct. 329	District Regulator & Measuring Station Structures	676	515
Acct. 330	Other Distribution System Structures	1,145	853
Acct. 332	Measuring & Regulating Equipment	1,830	1,481
Acct. 333	Distribution Line Equipment—Intermediate Low Pressure	396,010	313,385
Acct. 334	Services:		
	A—All except Industrial	80,986	62,359
	B—Industrial	8,672	6,677
Acct. 335 & 336	Meters & Meter Installations (Inside City Limits)	62,201	47,895
Acct. 337	Service Regulators	607	468

Plaintiffs' Exhibit No. 9—Continued

	Cost New	Less Depr.
Acct. 338 Other Distribution System Equipment:		
A—Industrial Installations	9,383	8,282
B—Furniture & Fixtures	10,310	7,320
C—Automotive Equipment	5,807	1,724
E—Tools & Equipment	2,321	1,741
Total, Except Material & Supplies	580,349	453,101
Acct. 338 Other Distribution System Equipment:		
D—Material & Supplies	17,387	17,387
Total—Distribution System—Laredo	597,736	470,488

[fol. 509] Pages 1807-1864, both inclusive, from S. F. Vol. III omitted.

[fol. 510] Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4,350	4,350
Acct. 318 Rights-of-Way	5,724	5,724
Acct. 320 Transmission Regulating & Measuring Station Structures	1,712	1,431
Acct. 321 Other Transmission System Structures	6,263	4,746
Acct. 323 Transmission System Regulating and Measuring Station Equipment	6,912	5,738
Acct. 324 Transmission Line Equipment	317,852	227,695
Acct. 325 Other Transmission System Equipment:		
A—Farm Taps	105	87
B—Telephone System	11,828	10,954
C—Miscellaneous	246	196
D—Furniture & Fixtures	666	268
E—Automotive Equipment	964	290
F—Tools & Equipment	149	127
Total, Except Material & Supplies	356,771	260,706
Material & Supplies	2,357	2,357
Total—Transmission System	359,128	263,063

[fol. 511] Pages 1866 to end of Plaintiffs' Exhibit 9 omitted.

[fol. 512] Questions by Mr. Lange:

Q. Mr. Elrod, please state how you proceeded in making the appraisal of the properties of the Texas Border and South Texas Gas Company, predecessor of the United Gas Public Service Company, now the owners of the property.

Mr. Coates: It is understood that our objection goes to this line of testimony.

A. In making the appraisal of the properties I endeavored to reproduce identical properties in the manner that

they were originally produced, at present day prices; in other words, taking the properties as I found them, and in the light of such history and knowledge that I had of them, I applied the current prices to represent as nearly as possible the fair value of the Gas Company's properties as of December 31, 1933, in the reproduction of a substituted plant.

(Defendant objects to testimony that exhibit represents fair value; objection overruled.)

Q. Now, Mr. Elrod, in proceeding to make that appraisal did you use prices of labor and material as of December 31, 1933?

A. I did.

* * * * * * *

[fol. 513] Q. On the transmission system, what does page B reflect on that?

A. It reflects the cost new, $359,128.00, and the depreciated cost, $263,063.00.

Q. And distribution system?

A. Distribution system, $597,736.00 new and $470,488.00 depreciated, or a total of $956,864.00 new and $733,551.00 depreciated.

Q. To those figures, how did you apply the allocation factors?

A. The last item about half way down the page before the division mark is noted Balance for Allocation of $897,-471.00.

Q. How did you arrive at that total?

A. That was arrived at by deducting from the original total of $956,864.00 sums for property already allocated, which was furniture and fixtures, auto and equipment, and tools and equipment, and deduction of an amount for excessive purchase and storage, leaving a balance of $897,-471.00 to be allocated to Laredo on the basis of 85.27 per cent.

Q. $897,471.00 reflects the cost new——

A. Cost new.

Q. —as of December 31, 1933.

[fol. 514] A. Yes.

Q. And the figure $686,923.00 represents the per cent condition—that is, the cost new less depreciation?

A. Yes.

* * * * * * *

Q. Now, the figure $690,261.00, that is under the column headed cost new less depreciation. That is the depreciation amount of the $891,616.00?

A. Yes, that is the cost new less depreciation.

Q. Now, Mr. Elrod, in appraising these properties, I will ask you as an engineer, how did you appraise these properties?

A. I appraised them as a going entity, as properties in operation with business attached and connected to gas wells.

Q. In making this appraisal, Mr. Elrod, of these properties, you did not in this appraisal include any items composing what is known as the Jennings Pescadito transmission line, did you?

A. No, I did not.

Q. Why—give your reasons fully as an engineer.

A. In my judgment as an engineer and in view of my [fol. 515] study of the situation and of the company's properties, I did not feel that the Jennings Pescadito line was necessary to serve the city of Laredo, and the cost of maintenance was a burden that should not be imposed upon the city and the city should not be called upon to bear the principal of the cost, as a part of the rate base.

(Defendant objects; objection overruled.)

* * * * * * *

Q. Mr. Elrod, in connection with the preparation of the appraisal reflected in plaintiff's exhibit 9, you did not set up a separate item for going value, did you?

A. No, sir.

Q. Why?

A. Because I did not consider that there was any basis for a going value. My judgment in having allowed what I conceived a full structure overhead cost——

(Defendant objects.)

The Court: Now, you are changing that word "allowed" to "estimated" there?

Mr. Lange: Yes, sir.

A. Now, where there had been no evidence of expendi- [fol. 516] tures for going concern values, I have not credited the estimate with going concern value.

Q. You made no separate allowance for that item?

A. Made no separate allowance for it.

Q. I mean no separate provision.

A. I beg your pardon again. No separate provision. In my estimates after having considered that the property was evaluated on the basis of a concern that was operating—an operating entity and going and having business attached. When the company started off its operations, it had business.

* * * * * * *

Cross-examination.

Questions by Mr. Coates:

Q. Mr. Elrod, referring to page B of Plaintiffs' Exhibit 9, and to that item on page B styled Engineering and Supervision, 2½ per cent, $19,593.00,—do I understand it to be your testimony that 2½ per cent of the direct construction costs, or $19,593.00, constitutes and represents your engineering judgment of the amount of costs which would be incurred for Engineering and Supervision if properties similar to these were to be reconstructed today?

[fol. 517] A. I believe I testified on yesterday that I had not made such an estimate, but that my estimate was made on the basis of these particular properties, or this particular property, constructed as it was constructed; that in 1910 $167,000.00 worth of the property was constructed, and after that time during the operations of the property, up to 1928——

* * * * * * *

(Question re-read to witness.)

Q. Can you answer that question, Mr. Elrod?

* * * * * * *

A. If the properties were blotted out and had to be reconstructed new to-day, starting from 'scratch', so to speak, I believe that the engineering service would cost more.

Q. How much more?

A. I think the fee would probably be on the total properties something like three and one-half per cent.

* * * * * * *

Q. Then that part of Plaintiffs' Exhibit 9 relating to transmission system properties, as I understand you, does not represent your engineering estimate of what it would cost to build a line similar in all respects to that transmission line of built today?

[fol. 518] A. Not exactly. My estimate reflects what it would cost, or rather what the identical properties there cost as of January 31, 1933.

Mr. Bobbitt: December 31.

A. December 31, 1933.

Q. Now does Plaintiffs' Exhibit 9, in so far as it relates to distribution system properties, represent your engineering estimate of what it would cost to reproduce and build and construct a distribution system similar in all respects to that now existing in Laredo if built today?

A. No; my estimate is only of what the existing properties—the identical properties—are worth as of December 31, 1933.

(Defendant renews prior objections taken to plaintiffs' exhibit 9; objection overruled.)

Q. Now, Mr. Elrod, as a matter of fact, isn't it your opinion that the cost of engineering and engineering supervision on this job, if these properties were reconstructed today, would be five percent?

A. It would be rather difficult to say what the costs would be under those circumstances, if these properties were to be reconstructed. Perhaps the engineering would be—well. I just don't know.

[fol. 519] Q. You just don't know?

A. No.

Q. Well, it is something that has been done many times in the last decade, has it not—the building of a transmission system into a town and the building of a distribution system?

A. Yes, but the reconstructing of this system is an entirely different thing, a different proposition. What it would cost to build a transmission system and a distribution system of similar magnitude new, would perhaps cost around 3½ per cent. • • •

Q. Well, I am asking you your judgment on it.

A. Well, my judgment is it could be done for that. I would do it for that.

Q. And isn't it a fact that you have set up two and one-

half percent of direct construction costs in Plaintiff's Exhibit 9 because someone has told you that as this property was constructed historically, over a period of 23 years, a part of the engineering work was done by engineers carried on the operating payroll?

A. Yes.

Q. That is a fact. And isn't it your judgment (and I don't think you gave a direct answer to this question) that if [fol. 520] similar properties to these were reconstructed today the cost of engineering and engineering supervision would be five per cent?

Mr. Bobbitt: Are you interrogating from a transcript of the testimony had before the Commission, Mr. Coates?

Mr. Coates: No, but I am just before doing it.

. . . . . .

A. The design and supervision of construction of work, transmission lines and distribution system of the magnitude of these lines, it probably would be.

. . . . . .

Q. Now, Mr. Elrod, in the course of a construction job such as reconstructing these properties, when would the cost of the engineering be incurred?

A. It would be incurred prior to the construction of the properties.

Q. Prior to the construction of the properties. And when would the preliminary and organization expense be incurred?

A. Prior to the construction of the properties.

Q. And what, with respect to the administrative and legal expense?

A. The same thing.

[fol. 521] Q. And in other words, the money would have to be provided and paid out for those costs, prior to the construction of the work. Now, have you included herein in your estimate of interest during construction, any interest during construction on the cost of engineering and supervision, preliminary and organization expense, or administration and legal expense?

A. No, sir.

Q. Those are an inevitable and concommitant part of the costs of construction, are they not?

A. Yes.

Q. And you pay out money for them in the same way as you pay out money for pipe and meters, do you not?

A. Yes.

Q. And you have computed your interest during construction on materials and costs of installation—that is, direct costs of installation, haven't you?

A. Yes.

Q. But you have not computed any interest during construction on the undistributed construction costs?

A. No.

Q. Now, Mr. Elrod, isn't it a fact that what you did here was to simply take ten per cent of the direct construction [fol. 522] costs and divide up that ten per cent arbitrarily between the five items which you show for undistributed construction costs?

A. I believe I so testified in the original case, and that is a fact.

Q. That is a fact now, is it?

A. Yes.

Q. And have you made any analysis or breakdown of the operations and functions causing costs which would enter into each classification of undistributed costs?

A. No.

* * * * * * *

Q. Is it based on any analysis of undistributed construction costs actually incurred in connection with the construction of natural gas properties?

A. No. I might say that it is based upon my judgment as an engineer as to what these costs would be in similar cases.

Q. Now, the transmission line equipment constitutes ninety per cent or better of the entire transmission system properties, does it not—that is, the pipe lines and the fittings?

* * * * * * *

[fol. 523] A. It is around ninety percent.

Q. Now, in the same way in connection with the distribution system properties, as reflected by the distribution

system section of Plaintiff's Exhibit 9, the direct costs new less depreciation are $490,488.00 are they not?

A. Yes.

Q. And of that amount, the costs of distribution line equipment and services and meters constitute some $430,000.00 or approximately ninety percent of that item, do they not?

A. Yes.

* * * * * * *

Q. Mr. Elrod, you made an appraisal of these same properties a year or more ago, did you not?

A. I did.

Q. And have you made an inspection of the distribution system properties since that time?

A. Visible properties, yes.

* * * * * * *

Q. Have you made an inspection of the mains and services?

A. No.

Q. And do you show in Plaintiff's Exhibit 9 the distribution system properties to be in the same percent condition as you showed them a year ago?

[fol. 524] A. No.

Q. What, with respect to the mains and services, is the difference between what you found a year ago and what you find now?

A. As a whole, I do not believe I have reduced that to percentages.

Q. I am referring now to the mains and services and not the remaining ten percent of the property. As a matter of fact, Mr. Elrod, haven't you simply reduced the percent condition of the mains under paving three percent, and the percent condition of the mains not under paving by five percent?

A. I have not reduced those to percentages, but I will do so.

Q. Are you unable to state whether or not that is a fact—that you simply reduced the mains under paving three percent and the mains not under paving five percent?

A. I do not know that that is absolutely correct.

Q. And what percentage reduction, to show the percent condition as at the present date, have you made in regard to the transmission lines?

A. I have not reduced that to over-all percentages.

Q. I am not asking you for the entire property but I am asking you simply for the transmission lines themselves. [fol. 525] A. I beg your pardon for taking so long, but this book was taken to pieces and put back, and I do not seem to find it by the index. That is correct.

. . . . . .

Q. What, in your judgment, is the best way of getting the fair over-all average condition of a transmission system line that is buried—that is, what is the best way of getting an average condition by inspection?

A. Solely by inspection, there is no best way according to my judgment.

Q. Isn't the better way to first ascertain points equally spaced at intervals along the line and then dig a test hole and make inspections at those particular points.

A. I think not. I think the better way is to go over the terrain and find, if possible, the hot spots, and test the lines particularly in those hot spots, where they are expected to be in worse condition than they would be in other places.

Q. In other words, go over the line and look for the places where you can expect the greater amount of corrosion?

A. Yes, sir.

Q. And do you likewise think that another good way of getting a fair over-all average per cent condition of the property is to inspect the pipe at those points where it has [fol. 526] been opened for repair?

A. Yes, I think that is a good way of finding out the condition. Any place that you can inspect a pipe where it is, either good or bad, is a desirable place to find out. The more inspections you make the more nearly you come to an accurate determination, if such a thing is possible by inspection.

Q. Then, do you think that inspecting the line at hot spots where a greater corrosion is to be anticipated, and inspecting it at points where it has been opened for repair is a better method of getting a fair over-all average per cent condition of the property than digging test holes at evenly spaced points along the line?

A. I certainly do.

Q. And that was the method that you have outlined—that is, inspecting the pipe line where it has been repaired and where the hot spots were—that was the method, generally speaking, followed in inspecting this Carolina-Tex-Laredo line?

A. No, we dug special test holes——

Q. How many?

. . . . . .

A. I testified that I didn't know. I presume there were [fol. 527] fifty dug at my direction along the line between the Carolina-Tex Field and Laredo City Gate.

Q. And were those dug at regular intervals?

A. No, they were dug at random.

Q. And in hot spots, principally?

A. No, just at random, without any reference to the hot spots.

Q. And did you inspect those fifty test holes?

. . . . . .

A. Yes, sir, I inspected the pipe at every test hole that was dug, whether I had it dug or not.

Q. And when were those test holes dug?

. . . . . .

A. They were dug in 1932.

Q. All of them prior to the Commission hearing?

A. Yes, sir.

Q. Have any special test holes been dug along that line and inspected by you since the Commission hearing?

A. No, sir.

Q. Now, in what instances in this Pescadito Junction Aguilares line did the result of your inspection cause you to change from your straight line age life method of three per cent a year?

. . . . . .

[fol. 528] A. I didn't know that I did change.

Q. Did you change in any respect from the three per cent a year, as the result of inspection?

. . . . . .

Mr. Fitzhugh: May I ask a question, please, sir?

The Court: Yes, sir.

Mr. Fitzhugh: Mr. Elrod, is that the correct designation for the method that you used for determining depreciation, straight line age life method?

A. I have used a combination of age and life and inspection.

* * * * * * *

Q. And can you point to any particular instance in Plaintiff's Exhibit 9 where the result of your inspection has caused you to change from your application of your age life computation?

A. I don't know that I can, offhand.

Q. You are thoroughly familiar with this exhibit, having made it, are you not?

A. Yes, sir.

Q. But at this time you are unable to point to any place relating to transmission lines where your inspection has changed the age life computation?

A. No.

* * * * * * *

[fol. 529] A. I relied upon their judgment, to mould my judgment.

Q. Then, it represents your judgment as moulded by their judgment, does it?

A. Aided by my inspection and examination of the pipe and the conditions that surrounded it, with a number of soil tests.

Q. Then you didn't refer to any handbook or anything of that sort—didn't take this age life table from any handbook?

A. No.

* * * * * * *

Q. Mr. Elrod, you used as cost of excavation on transmission lines five cents per foot of trench, did you not?

A. Yes, sir.

Q. That was the same figure that you used when you testified before the Railroad Commission?

A. Yes, sir.

Q. And that is estimated on the basis of the performance of a Buckeye No. 2 Trencher, isn't it?

A. No. 32?

Q. Buckeye No. 32 Trencher.

A. Just a moment; I will see. (Witness consults data.) Yes, sir, No. 32.

* * * * * * *

[fol. 530] Q. Now, what type and character of truck did you base your estimate of performance on?

A. I used a 1-ton truck with an average speed of 16 miles per hour.

* * * * * * *

Q. Now, in computing your price of pipe f. o. b. Laredo or f. o. b. delivery point, did you compute that price in carload lots?

A. Yes, sir.

Q. On the basis of quantity purchases?

A. Yes, sir.

Q. And under the latest quotations that have been given you by pipe manufacturers?

A. Yes, sir.

Q. And with respect to dresser couplings did you figure that on the basis of quantity purchases?

A. Yes, sir.

Q. And on the basis of delivering dresser couplings in carload lots?

A. Yes, sir.

Q. I believe you have previously testified, Mr. Elrod, that in making the appraisal of these properties you endeavored [fol. 531] to reproduce the identical properties in the manner in which they were originally produced?

A. Yes, sir.

Q. Did you ascertain whether these trenchers—as this property was originally produced were cut with a No. 32 Buckeye Trencher?

A. No, sir.

Q. And did you find out whether any of them were hand excavation?

A. No, sir.

Q. Then to that extent you have varied from producing them in the manner in which they were originally produced, have you not?

A. No; that information was not available, and I had to use my best judgment as to——

Q. You had to use your best judgment?

A. Yes, sir.

Q. Well, do you know whether there were any Buckeye No. 32 models back in 1922?

A. I don't know whether there were any Buckeye 32's in '22.

Q. The modern type is more efficient than the old type, is it not?

[fol. 532] A. Yes, I suspect it is. Most modern machinery is more efficient than older machinery.

Q. And did you ascertain whether all this pipe was hauled out to location, at the side of the ditch, with trucks, or some of it with mules and wagons?

A. No, I didn't. I suspect some of it was hauled by mules and wagons, but I have no way of knowing.

Q. And so you used or based your estimate on hauling it with modern type trucks?

A. Yes, sir.

Q. Did you ascertain whether, as these properties were originally produced, the pipe was all sent down in carload lots?

A. I had no way of ascertaining that information, of course.

Q. You get a lower price for pipe in carload lots, don't you?

A. Yes, sir.

Q. Did you ascertain whether the dresser couplings came in carload lots or l. c. l. lots—less than carload lots?

A. I had no way, of course, of ascertaining that information.

Q. And your freight rate on dresser couplings in carload lots is less than it would be in less than carload lots, is it not?

A. Yes, sir.

Q. Well, did you compute this cost of hauling on the basis of hauling over highways of the kind and character that [fol. 533] existed when this property was originally produced?

A. No, I think my figures fairly represent the hauling, regardless of how it was hauled.

Q. Then to that extent you have either been without knowledge or have varied from your concept of producing

these properties as they were originally produced, did you not?

A. We have had to exercise the best judgment that we could in arriving at the prices for the various elements of property and the manner in which it was done. Where it was possible to obtain information as to how the construction was originally done, that information was made use of; and where any bit of history could be utilized, it was utilized.

Q. But in respect to quantity purchases, hauling by trucks, cutting ditches by trenchers, and carload haulings, why, those all may have a lower price?

A. Yes.

* * * * * * *

Q. Did I understand you to testify that you had included going value in Plaintiff's Exhibit 9?

A. I had not included it as a separate item.

Q. Have you included going value in the appraisal of these properties as shown by Plaintiff's Exhibit 9?

A. No, sir.

* * * * * * *

[fol. 534] Q. Now, with respect to distribution mains, what age life did you use?

A. That was given two per cent.

Q. That is, 50 year life on what mains?

A. On the pipe under pavement.

Q. What on pipe not under pavement?

A. On the black pipe, we gave it 45 per cent condition, and the protected pipe, 72 per cent condition—that is, the painted pipe; and the enameled and wrapped pipe, 85 per cent condition.

Q. What age life did you use?

A. We did not use any age life on it, because we did not know what the age life was.

Q. Now, when you came to bring your appraisal for 1932 down to 1933, on mains under paving, how much did you deduct?

A. We took off five per cent.

Q. On mains under paving?

A. No, we took off three per cent.

Q. Why did you change from two per cent a year to three per cent a year?

A. Well, we had a year and a half difference.

* * * * * * *

Q. Did you inspect that pipe in July, 1932?

[fol. 535] A. It was inspected prior to July, 1932.

Q. Prior to July, 1932. So that is really a year and a half?

A. Yes.

Q. Now, what did you take off on this pipe that was not under paving?

A. I think we took off five per cent on the black pipe.

Q. What span of months does that cover?

A. That covers the same span of months.

Q. And what age life is that?

A. Well, I don't think we had any age life on it. I think that pipe was arrived at or the per cent condition was arrived at by inspection and the use of a supposed or a guessed at age and life.

Q. All right; now did you use age-life to deduct this five per cent to show 1933 over 1932?

A. I don't think we did. I think we just arbitrarily reduced the figures as they are shown.

Q. Just arbitrarily reduced them five per cent for all mains not under paving?

A. Yes.

* * * * * * *

Q. But the mathematical calculation gone through with, was to deduct five per cent from the per cent condition you [fol. 536] gave for 1932?

A. From the pipe not under pavement, and that was based on the fact that the pipe not under pavement, the unprotected pipe, was going out in about twenty years. When I made inspections of the pipe early in 1932, we found pipe being removed from the system at that time that had been put in in 1910 or 1911.

Q. And so you got your twenty year age life period, at the rate of five per cent, per annum, from that data, did you?

A. Yes. That is, in part.

Q. And the fifty year life for mains under paving, that is just arrived at on the basis of your best judgment?

A. And it was conditioned pipe. That is, it was well prepared, cleaned, painted and wrapped and it should have a life under pavement of fifty years.

* * * * * * *

Q. Now, does the reconditioning of a pipe line—that is, where you strip the line, take up the pipe, cut the welds, clean, sand-blast, cull, prime, coat and turn over the pipe and put it back in the ditch as a reconditioned job; does that offset loss in value of that line?

A. Not entirely.

Q. Does it tend to offset it?

[fol. 537] A. Yes; of course any maintenance tends to offset the depreciation of the pipe.

* * * * * * *

Q. Now, does the installation in the line of a substantial number of replacements, that is, new joints and stretches of pipe, raise its per cent condition?

A. Yes; it does. I will qualify that by saying that the installation of new joints in a line—that is, how much it will raise its condition depends on how well the pipe has been maintained, and how frequently it has to be done. For instance, I think, in this particular territory, or rather in Laredo, where the pipe laid is under discussion, that in certain parts of the country the soil is of such a corrosive nature, that this work of reconditioning and replacing and adding joints from time to time is almost a continuous process, or used to be, and the pipe will stand just so much of it.

* * * * * * *

Q. I say, doesn't the application of the life table of 33 years, taking into account, as it does, the average span of years from date of installation to date of retirement, and taking into account only current maintenance to these lines here, ignore the extent to which the per cent condition of [fol. 538] those lines has been raised by replacements of pipe in the line?

A. Yes. However, the examinations that were made of the pipe, in connection with the knowledge that we were

able to obtain as to the date of installation, indicated that the pipe was in the condition that was given it.

Q. But in no instance have you varied except in respect to these lines where you took the 67 per cent condition arbitrarily—in no other instance have you varied from your application of three per cent per year, have you?

A. On the transmission lines?

Q. On the transmission lines.

A. No, sir.

• • • • • • •

Q. Now, in your study of this property, this line Pescadito to Jennings was built to serve Laredo, wasn't it?

• • • • • • •

A. Yes, sir.

Q. And was included in your 1932 appraisal, wasn't it?

A. Yes, sir.

Q. And was used to serve Laredo in 1932, wasn't it?

A. I believe that it was at one time.

Q. And was used to serve Laredo in 1933, wasn't it?

[fol. 539] A. From my personal knowledge, I don't know.

Q. You don't know. Well, it was in service when you inspected it in 1934, wasn't it?

A. Yes, sir.

Q. And flowing gas in the direction of Laredo, wasn't it?

A. Yes, sir; and leaking very badly.

Q. Now, a good section of that line was reconditioned in 1933, wasn't it?

A. Yes, sir.

• • • • • • •

Q. That is there are thirty mile posts, • • •.

A. Yes, sir; One is at the lower point, and Thirty is up at the top point. The reconditioning in the northerly end of the line started at, judging from the ditch, Mile Post 18, pole 7 plus 15 feet, and ended at Mile Post 21, pole 1 plus 165 feet.

• • • • • • •

Q. All right. Where was the other reconditioned section?

A. In the southerly end, starting at Mile post 10 pole 19, I believe, and ending at Mile Post 14 pole 27.

Q. That reconditioning was done in 1933, wasn't it?

A. I presume so.

Q. And the reconditioning job had been completed when [fol. 540] you went over it in February, 1934?

A. Yes, sir.

• • • • • • •

Q. Isn't it a fact, Mr. Elrod that when you went over the line in February, 1934, that from Mile Post 1 to Mile Post 15 you did not find existing in the line any leak clamps, or any leaks in the line, except the one to which you have referred; that is, at Pole 18, Mile Post 8, you have a notation of bad condition?

A. That is at Mile 8 and pole 14.

• • • • • • •

Q. What did that bad condition consist of?

A. Condition on 13 side of coupling, good; other side, bad.

Q. What do you mean "bad"?

A. Well, the pipe was badly pitted.

Q. Was it leaking?

A. I couldn't tell.

Q. Is that the only bad spot that your notes show between 1 and 15—between Mile Posts 1 and 15, when you made your inspection in 1934?

A. I think so.

• • • • • • •

Q. In your inspection in February, 1934, did you find any leak clamps or leaks in the line between Mile Post 15 and [fol. 541] Mile Post 16?

A. Yes, sir; there was a clamp at Mile Post 16 pole 27.

Q. All right; is that the only place?

A. Yes; between those.

Q. Now, how about Mile Post 16 and Mile Post 17?

A. There is a clamp and leak in two holes in Mile 16 between poles 2 and 3.

Q. How about between Mile Post 18 and Mile Post 22—this is in 1934?

A. A leak at Dresser coupling on Mile 16 between Poles 14 and 15.

Q. That is back in Mile Post 16?

A. Yes, sir, Mile 16. Mile 17, in a hot spot, five joints of pipe replaced.

Q. Has new pipe been put back in the line?

A. I don't know whether new pipe or not.

Q. Was it leaking in February, 1934?

A. No, sir. I believe that is all I have.

Q. How about in February, 1934, between 18 and 21—Mile Posts 18 and 21?

A. Between 18 and 21, there were no leaks. It was where the reconditioning began.

Q. Did you find leak clamps between 21 and 22 in 1934?

A. At Mile 21 pole 18 plus 15 feet, leak clamp.

[fol. 542] Q. How about between 22 and 23?

A. Mile 23 pole 5, leak clamp; pole 9, plus 100 feet, leak clamp; pole 16 plus 30 feet, leak clamp; pole 19 plus 100 feet, leak clamp; pole 21 plus 75 feet, leak clamp.

Q. Allright. How about from 24 to 27—mile post 24 to 27?

A. Nothing between 24 and 27.

* * * * * * *

Q. But I am talking about in those last four miles here, were not the major portion of the leak clamps that you found there?

A. There were a good many of them, yes, sir.

Q. Well, what percent of the total that you read out?

A. I haven't figured that out; I have not made a list of them.

Q. Now, did you investigate to determine whether these two reconditioning jobs were done in a workmanlike manner or not?

A. They seem to be.

* * * * * * *

Q. Now, do you use "working cash" to mean working capital?

A. Yes, sir.

Q. Do you subscribe to the proposition that the amount of working capital included in an engineering appraisal [fol. 543] of property of this sort should equal in amount

the amount of free capital used in a business and actually employed in the business by the managing officials?

A. I subscribe to the proposition that one-eighth of the total operating expenses, less gas purchases, as in the case of purchases made from an affilicated company or from themselves is sufficient as being a rather good allowance—I beg your pardon—provision.

Q. Do I take you answer to mean that you do not subscribe to the proposition I have outlined to you?

A. I do not subscribe to it.

Q. And do you subscribe to the proposition that the amount of working capital in an engineering appraisal of this sort should be the amount of free cash capital held in the business and used and employed in it by the managing officials and not available for investments and earning a return in other ventures?

* * * * * * *

A. Forty-five days of the operating expenses, in other words; I think that is enough.

Q. Now, do you take into account in computing cash working capital any minimum bank balances kept on hand by the Company?

[fol. 544] A. No, I think that is a matter that is purely arbitrary with them.

Q. Purely arbitrary, or purely discretionary?

A. Discretionary is better, yes. I thank you.

Q. And even if they, in their judgment, in the management of this property feel it necessary to keep on hand for the use of the property a minimum bank balance, then you don't think that it ought to be taken into account in computing working capital?

A. No, I think Consulting Engineers performing the duties that I have been called upon to perform here have to have some rule that is backed up by experience or what has been provided in other cases, to guide them, and take that as the guide.

Q. You mean some formula like this forty-five day operating——

A. Yes, I think that is rather generally used, and I think from a study of the situation that it is sufficient, and that is why I have used it.

Q. Well, now what study of the situation have you made?

A. Well, the Company has to pay its employes, I presume, and has to take care of the ordinary expenses from month to month, and the average expense for a year—or rather [fol. 545] for a month is a twelfth of that for the year, and if you will allow them a fifteen day leeway for such things as delayed payments, and so on, that that is sufficient —that is, the total operating expenses for the month, which is a twelfth of the year, plus fifteen days additional, seems to me, from the standpoint of engineering judgment should be enough; and that is the amount I have allowed, and that is the way I have gotten at it.

Q. Do you take into account prepaid items?

A. No, sir.

Q. Neither prepaid items nor minimum bank balances actually kept on hand by the Company?

A. No, sir.

. . . . . .

Q. Now, you have said, I believe, that you have had no experience in operating a property of this sort?

A. No, not of natural gas.

Q. And do you know of your own personal knowledge of any company of this character which keeps its cash paid out down to the point where it has got no more cash on hand after it meets its monthly payroll than an additional fifteen days of operating expenses?

. . . . . .

[fol. 546] A. No, I don't.

Q. You say you don't know of any such company?

A. I don't know of any such company.

Q. Well, as a matter of fact, do you know about the operating practices of gas utilities in that respect?

. . . . . .

A. I testified originally, I believe, that I had never had any experience with the operation of a gas company, and I haven't had any occasion to go into the operations of this company.

. . . . . .

Q. Now, did you include in Plaintiff's Exhibit 9 the Carolina-Tex. gathering system?

A. No, sir.

Q. And you didn't include the Jennings-Pescadito line?

A. No.

Q. Nor any gathering lines in the West Jennings field?

A. No, sir.

Q. Does Plaintiffs' Exhibit No. 9 purport to constitute an appraisal of the property used to serve Laredo?

A. Used and necessary to be used to serve Laredo.

Q. Used and necessary to serve, but it does not purport to constitute an appraisal of all the property used to serve [fol. 547] Laredo during 1933?

A. No.

Q. And if they did not have that gathering system over in the Carolina-Tex. field how would the gas get over to the transmission line? • • •

A. No, it could not get three unless the gathering system were there.

Q. And in the same way there is no way known to science by which gas could jump up from the Jennings field to Pescadito Junction?

A. No. I readily admit that the gathering lines are necessary.

• • • • • • •

Redirect examination.

Questions by Mr. Lange:

Q. In connection with the making of that appraisal you have inspected the properties?

A. Yes, sir.

Q. And further in connection with the making of that appraisal you also studied the history of the properties?

A. Yes, sir.

Q. And in compiling this appraisal of the properties did you have occasion to look into the future needs of the property as to the requirements for future depreciation?

[fol. 548] A. Yes, I had occasion to make a study of depreciation as connected with these particular properties prior to the Railroad Commission hearing and to study the accounting records in connection with depreciation and to arrive at a conclusion at that time, based on my engineering experience, as to what amount of depreciation would be

necessary for the future—that is, what annual allowance, or provision, rather, should be made for future depreciation.

Q. Have you arrived at an opinion, and what in your opinion is a proper and necessary allowance for future annual depreciation?

(Defendant objects on ground witness not qualified; objection overruled.)

* * * * * * *

A. My opinion at that time was that two per cent was adequate. I think that a maximum of three per cent, or rather an amount not in excess of three per cent should be provided.

Q. That is your opinion at this time?

A. Yes.

The Court: I want to know, three per cent of what?

A. Three per cent of the appraised costs of the properties.

The Court: As you appraised it or as somebody else appraised it?

A. As may be fixed or as was fixed by appraisal.

[fol. 549] The Court: Whose appraisal? I want you to say whether yours or Mr. Greene's or somebody else's.

A. The Railroad Commission, I believe, established a base and from that base we have taken away some of the properties that were included at that time and have made a new base or found a new value, and it is upon that new value that I would base my rate of return.

Mr. Coates: Reproduction cost new, or reproduction cost new less depreciation?

A. Cost new.

* * * * * * *

The Court: * * * Your maximum of three per cent that you would allow for depreciation is based on a figure found by you, I understand now?

A. Yes, sir.

The Court: Since the fair value of the property was fixed by the Railroad Commission in their hearing?

A. Yes, sir.

The Court: Now, where is the figure of fair value as found by you in the evidence?

* * * * * * *

A. The total cost new of the depreciable property. From that, of course, would have to be deducted land, which does [fol. 550] not depreciate, and rights of way, which do not depreciate, and materials and supplies and other such working cash.

* * * * * * *

A. If I may make a little further explanation——
The Court: All right.

(Defendant renews objection to qualification of witness.)

* * * * * * *

A. The object of depreciation, or provision for annual reserve to take care of depreciation, which is the loss of anything by a practical means, as rot, rust, and so on, is to maintain the integrity of the original investment. If the original investment is arrived at as being the figure that I have just quoted, less items that do not depreciate, then the per cent that is provided only bears upon that figure to provide a fund that will restore the items of property in that original figure, as they go out of existence, at their original cost.

* * * * * * *

The Court: Mr. Elrod, will you read into the record the figure you are talking about shown there in your exhibit on which you calculate the three per cent you are talking about? Read that exact figure.
[fol. 551] A. The exact figure is $891,616.00, less working cash, materials and supplies.
The Court: Well, state it exactly; I mean exactly the net figure.
A. I haven't the exact net figure. I can calculate it.

* * * * * * *

The Court: Now, Mr. Elrod, have you located that exact net figure you were asked for, and you said you would make the calculation on?
A. Yes, the net depreciation base is $829,559. It must be borne in mind, however, that there are corrections to be made in that, and that the three per cent maximum rate of depreciation must apply on any figure that is fixed by this Court or in this court.

* * * * * * *

Questions by Mr. Lange:

Q. In connection with the preparation of this appraisal and your study of the history of this company and its properties and its financial history, I will ask you whether you had occasion to look into the financial needs of this company in the past, and what in your opinion would be the financial needs of this company in the future as a fair rate of return on [fol. 552] its properties as you computed them in this appraisal?

(Defendant's objection to qualifications of witness renewed and overruled.)

* * * * * * *

A. I believe I testified in the Railroad Commission hearing——

The Court: Just testify here.

A. I believe that seven per cent on the value of the properties as found by me is an adequate return for the company.

Q. That is before the allowance for depreciation?

A. That is before, and does not include the allowance for depreciation,—the allowance for depreciation to be in addition to the seven per cent.

Q. And is, as you testified, in your opinion, three per cent?

A. Yes, or a total of three per cent.

Q. Or a maximum of three?

A. I think that is a high figure.

Q. Or a total of the two of ten per cent?

A. Yes.

Q. As a maximum figure?

A. Yes.

* * * * * * *

[fol. 553] Recross-examination.

Questions by Mr. Coates:

Q. Seven per cent of what, Mr. Elrod?

The Court: I believe he answered that a while ago. He said it was of the fair valuation as found by him.

Q. Well, what is the fair valuation found by you?

* * * * * * *

A. $690,261.00, which is the depreciated value of the properties as of December 31, 1933, as found by me.

Q. Now, can you compute the total requirements for depreciation reserve and return as estimated by you—the total annual requirements?

A. I haven't done so. I will.

• • • • • • •

Q. Mr. Elrod, in accordance with your testimony as to rates of return and reserve accrual, what would be, according to your testimony and in your opinion, the total annual requirements for reserve accruals and return?

A. On the bases that have just been quoted, without adjustments that have been asked for, it will amount to $73,205.00.

Q. And with the corrections that you have been asked to make it will amount to some more than that, will it not?

[fol. 554] A. Presumably.

Q. Well, presumably—you are going to add more value to that transmission line, aren't you?

A. Yes.

Q. And you are going to compute three per cent on that, aren't you?

A. I think so.

Q. Well, don't you know whether you will or not?

A. I am going to figure whatever those figures are.

• • • • • • •

Q. All right, sir. Mr. Elrod, yesterday you were asked the following questions, and didn't you give the following answer: "Q. Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir". Was that your testimony yesterday?

A. Will you read me the question preceding that one?

Q. Yes. "Question: Do I understand you to testify that you had included going value in Plaintiff's Exhibit 9? Answer: I have not included it as a separate item. Question: Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir."

[fol. 555] A. Well, I misunderstood your question, and what I intended to convey was that I had not included it as a separate item in that appraisal.

Q. Well, where is it? Point it out in Exhibit No. 9—what page does it appear on?

A. It does not appear on any page and does not appear except as an intangible thing, connected with and indistinguishable from the properties, and is the value in a utility that comes from the fact that the utility is established and is going and has business connected, as against a similar property that is not so advanced.

Q. How much is it?

A. I have not arrived at any figure for it.

Q. Do you know whether it is One Dollar?

A. No.

Q. Do you know whether it is Fifty Cents?

A. No.

Q. Well, do you know whether it is more than fifty cents?

A. No, I have not arrived at any value for it.

Q. Have you appraised it?

A. No, not except——

* * * * * * *

[fol. 556] Q. All right, Mr. Elrod; except what?

A. Except that I had appraised the property, as previously testified, as a going entity, with business attached, as against one not so advanced. In other words, if the property had had no business attached and no establishment effected, I would have appraised the property as junk.

Q. As junk? Well, how much would you have appraised them for, as junk?

A. I would have appraised them at the cost of the properties, less the cost of taking them up and salvaging them for whatever could be had for them.

Q. Well, have you in your mind any figure as to what that would be?

A. No.

Q. What the junk value is? I am trying to pin down and get the dollars of going value you have allowed.

A. I have not made any such estimate of dollars for the going value.

Q. Well, you say you can not find it in here on any page, and you can not state the number of dollars that it is?

A. That is correct.

Q. And yet you say it is in here, do you?

A. That is correct.

[fol. 557] Q. Well, how is one picking up this exhibit to know where it is, and how much it is?

A. From my statement that the properties were valued as a going concern; that is, as a going entity, with business attached.

* * * * * * *

Q. * * * Mr. Elrod, I am now directing your attention to this volume which has been marked for identification Plaintiff's Exhibit 9. You are familiar with it?

A. Yes.

Q. You made it?

A. Yes.

Q. In that volume, on page B you show what you had termed the direct construction costs of the transmission system property and the distribution system property, do you not?

A. Yes.

Q. Which is reflected—that is, these direct construction costs are reflected on page B of Plaintiff's Exhibit No. 9, by the total figure, cost new, of $897,471.00. Is that correct?

A. Yes.

Q. And by cost new less depreciation of $686,923.00?

A. Yes.

[fol. 558] Q. Now, that makes up the total of the direct structural costs which you have said include the costs of material and the costs of installation of this property, as shown by its inventory?

A. Yes.

Q. Now then, I asked you where, in any of these direct structural costs represented by the figures that I have pointed out, is any going value?

A. I don't believe I can answer that question directly, or direct your attention directly to where any such item is, without our understanding each other as to what going concern value is. My conception of going concern value is the value that attaches to a business as being established, and going, doing business with customers attached; the cost of that or the sacrifices made to produce that condition, such as the training of a personnel, the assembling of records and getting the people in a receptive mood to take the commodities of the utility——

(Interruption by defendant's counsel.)

* * * * * * *

A. And these items are proper charges to capital account. If they are not charged to capital account, they

[fol. 559] are charged, if they are charged at all, to operations. They are not charged to capital account, so far as I can find. If they have been charged to operations, they have been taken care of or it doesn't matter whether they have been taken care of or not.

Q. But I am talking about Plaintiff's Exhibit 9. Now, the direct construction costs are your engineering estimates of the cost of purchasing and installing and bringing into a completely constructed property, the inert physical elements of this property, are they not?

A. Yes.

Q. Now then, in those costs and in those dollar figures of $897,471.00 cost new, and $686,923.00 cost new less depreciation, is there any element of going value or does that constitute costs of material as estimated by you, and the costs of installation, as estimated by you?

A. Yes, and the difference between that and what the properties would be worth if they had no business attached and were not a going concern is perhaps the measure of going concern—that is, the junk value.

Q. Do you purport this to be an engineering estimate of costs or a legislative finding of value?—These direct construction costs here?

[fol. 560] A. They purport to be an estimate of costs.

Q. And that is an estimate of costs. Well then, where, in those estimates of cost, is any element for going value?

A. Just in just what I have said, in that they are valued as a going entity, and if they had not been valued as a going entity, they would have been valued as junk.

Q. Well, let's go over it again.

A. You will get the same answer.

* * * * * * *

Q. Do you subscribe to the proposition that going value is the added element of value inhering in a property, over and above the values of its component parts, by reason of the fact that it has its business attached, its operating personnel trained, its operating routines established and is in connected and coordinated operation?

A. Yes.

Q. And have you separately evaluated or evaluated at all any such element in this property?

A. No.

* * * * * * *

[fol. 561] The following are pages 1983-1986, both inclusive, from S. F. Vol. III.

[fol. 562] PLAINTIFFS' EXHIBIT No. 12

Supplement to Plaintiff's Exhibit No. 9

Allocation

Assuming that all gas delivered to Laredo Section originates in Carolina-Texas Field, the following distribution is made:

	M. C. F.	%
Aguilares	630	.14
Oilton	2,612	.56
Mirando	12,037	2.59
Misc.	2,297	.49
Laredo City, inside—	317,071	68.18
Laredo City, outside—	130,434	28.05
Total M. C. F.	465,081	100.00%

Ratio of volume of gas delivered at Aguilares Junction for inside Laredo City is	68.18%
Ratio of volume of gas delivered at Laredo City Gate for inside and outside is (317,071 M. C. F./465,081 less 17,576 M. C. F.)	70.85%
Appraised value, new, of Transmission property from Carolina-Texas field to Aguilares Junction	$92,127
Appraised value, new, of Transmission property from Aguilares Junction to Laredo City Gate	$267,001
Total Transmission Properties	$359,128

Proportion of Transmission Properties Allocable to Laredo:—

Carolina-Texas, Aguilares Jc. Section	$92,127x68.18%	—$62,812
Aguilares-Laredo	267,001x70.85%	— 189,170
	359,128x70.16%	—$251,982

Weighted average percent for allocation of Transmission Properties.. 70.16%

	Total Appraised Value New		Allocated to Laredo
Transmission Properties	$359,128x70.16%		$251,982
Distribution Properties	602,258		575,616
Totals	$961,386	86.08%	$827,598

Weighted average per cent. for allocation, 86.08.

[fol. 563] General Summary and Allocation

	Cost New	% Condition	Cost, New Less Depr.
Transmission System	$357,707		$261,919
Distribution System	601,338		473,339
Totals	959,045		735,258
Less:—			
Land, Leases & Rights-of-way	10,475		10,475
Balances	948,570		724,783
Materials & Supplies	19,744		19,744
Balances	928,826	75.91	705,039

Plaintiffs' Exhibit No. 12—General Summary and Allocation—Continued

	New Cost	Condition %	Less Depr. Cost, New
Included with and incorporated in this amount, as "Expense of Purchase & Storage," and deducted as being excessive	28,741	75.91	21,795
Balances	900,115		683,244
Add back for Land, Leases & R. O. W.	10,475		10,475
Add for Reasonable Purchase & Storage	7,500	75.91	5,693
Totals	918,090		699,412
Less Items Already Allocated:			
Furniture & Fixtures	10,310		7,320
Auto & Equipment	5,807		1,724
Tools & Equipment	2,321		1,741
	18,438		10,785
Balance for allocation	899,652		688,627
Allocated to Laredo, 86.08%	774,420		592,770
All Items Already Allocated	18,438		10,785
Total Allocated to Laredo	792,858		603,555
Preliminary & Organization, 2%	15,857		15,857
Engineering and Supervision, 2½%	19,821		15,046
Administration & Legal, 1½%	11,893		9,028
Taxes During Construction, ½%	3,964		3,964
Interest During Construction, 3½%	27,750		21,065
[fol. 564]			
Materials & Supplies	$19,744		$19,744
Working Cash, 45 days of Annual Operation Expense less Gas Purchases	9,788		9,788
Totals	$901,675		$698,047
Total value, Depreciated			$698,047

[fol. 565]

	Cost of Reproduction	
	New	Less Depr.
Summary:		
Transmission System of South Texas Gas Company	$357,707	$261,919
Distribution System of Texas Border Gas Company	601,338	473,339
Total	$959,045	$735,258

[fol. 566] Re-cross-examination.

Questions by Mr. Coates:

Q. Now, so that I may clearly understand you and so that the record may reflect your methods, is it not true that you treat lands, leases, and rights-of-way, materials and supplies, preliminary and organization expense, and cash working capital—or working cash, as you term it, as non-depreciable items?

A. Yes, it is true.

Q. And as not to be taken into account in the base for computing the annual reserve for depreciation, retirements, and replacements?

A. Yes.

[fol. 567] ALBERT MARTIN, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name?

A. Albert Martin.

Q. Where do you live, Mr. Martin?

A. In Laredo.

Q. How long have you lived in Laredo?

A. I have lived in Laredo all my life—forty-four years, except two years spent in the United States Army, one of which I spent in France.

Q. Have you lived continuously in Laredo, with that exception?

A. With that exception, yes, sir.

Q. All your life. What position do you hold—what official position in the City of Laredo?

A. Mayor.

Q. You are mayor of the town?

A. Mayor of the city, yes, sir.

Q. How long have you been mayor of the City of Laredo?

A. Eight years.

[fol. 568] Q. Eight years. Did you serve in any other official capacity with the city prior to the time you became mayor?

A. Yes, sir.

Q. What was it?

A. Alderman.

Q. How long did you serve as alderman?

A. Six years.

* * * * * * *

Q. On another matter it has been testified in this case by Mr. Stein, the District Manager of the United Gas Public Service Company at Laredo, that reducing the price of gas

from 75 cents per thousand cubic feet to 55 cents per thousand cubic feet, as provided in the Commission's order, would not bring to the Company any increased number of customers, or any increased volume of gas sales to existing customers in the City of Laredo. You live in the City of Laredo, and are a consumer of gas, are you not?

A. Yes, sir.

Q. Would the reduction of the price cause you to use any more gas than you use at the 75-cent rate?

A. Certainly it would.

[fol. 569] Q. Are you acquainted generally with the users of gas for residential purposes in your city?

A. I am.

Q. I believe the population of the city according to the last census is approximately 35,000; is that correct?

A. Yes, sir.

Q. That is about right?

A. Yes, sir.

Q. The testimony in this record shows that there are approximately five thousand gas users in the City of Laredo. Being acquainted with the situation in the city, as you are acquainted with it, would there, in your opinion, be an increased number of gas consumers—I mean, residential consumers in number, and an increased amount of gas used by existing customers, if the price is 55 cents, instead of 75 cents?

(Defendant's objection overruled)

* * * * * * *

A. They would gain more customers, and the present customers would burn more gas.

* * * * * * *

Q. How much increase do you think there would be?

A. There would be an increase of aproximately fifteen hundred meters.

[fol. 570] Q. In your opinion there would be an increase of approximately fifteen hundred meters?

A. Yes, sir.

Q. What do you base that opinion on?

A. I think I am pretty familiar with the conditions existing in Laredo. I further know that there is a fleet of ap-

proximately one hundred trucks operating out of Laredo, going as far north as my ranch. I own a ranch fifty-five miles north of Laredo on the paved highway, and ten miles east of a dirt road, and there is approximately fifteen trucks going out there—have been going out there for the last six months, two men to the truck, to haul wood, for which they pay me seventy-five cents a load; they go out 66 miles and return 66 miles, cut that wood, and put it on the truck and bring it back to town, and they have all told me that they make a nice profit on that load of wood.

(Defendant's motion to strike overruled.)

Q. What did you state they had told you?
A. That they had made a profit.
Q. Those hundred trucks that haul wood in there, they distribute that wood to people desiring to have fuel in their homes in Laredo, don't they?
A. Yes, sir.

[fol. 571] Q. Would these users of wood, in your opinion, use natural gas if they could get it at the 55-cent rate, rather than the 75-cent rate?
A. In my opinion, they would.

(Defendant renews objection to entire line of testimony.)

• • • • • • •

Q. Now, Mayor Martin, testimony in this record by the witnesses for the Gas Company shows that the primary reason, as I gathered it from that testimony, for the non-use of gas by a great many people in the City of Laredo was the fact that the installation for the use of gas was the trouble, and not the price of gas. Are you familiar with the character of installation that many of the gas users, or would-be users of gas, install for the use of gas in their homes?
A. I think I am.
Q. Approximately what would be the expense?
A. Six to eight dollars.

• • • • • • •

Q. I mean what material would that include?
A. It would include an extension from the curb to the property line and a connection for stove and light.

Q. Do you know whether, of your own knowledge, there [fol. 572] are a large number of users of gas there with just such an installation as you testify to—a very simple and inexpensive installation?

A. Yes, sir.

Q. There are a great many laboring people living in the City of Laredo?

A. Yes, sir.

Q. People of small means?

A. Yes, sir. We have three thousand registered with the Relief Board.

Q. People that rent their homes?

A. Yes, sir.

* * * * * * * *

Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Now, as I understand your position, Mayor Martin—just so we can understand each other—what you are attempting to get here as the Mayor of the City is lower gas bills for your consumers in the City of Laredo, is it not?

A. Yes, sir.

Q. And that was the idea you had in mind at the time the rate reduction ordinance was passed, wasn't it?

* * * * * * *

[fol. 573] A. Yes, sir.

Q. And that was the result that you thought the rate reduction ordinance would have?

A. Yes, sir.

* * * * * * *

Q. * * * It has been your intention, and you have stated on a number of occasions, haven't you, that by putting that rate into effect, why, that would give the residential consumers there in Laredo approximately twenty per cent reduction in their gas bills?

A. Yes, sir.

Q. And that is the effect you think the putting into effect of this rate will have?

A. Yes, sir.

* * * * * * *

Q. And you have stated on numerous occasions, have you not, that if the rate is put into effect that it will mean consumers will get a refund of approximately twenty per cent of the amount of the bills that they have paid since January 1, 1932?

A. I have stated that because of the fact that is what the order of the Commission carries, the difference between the 55-cent rate and whatever rate we have been paying.

* * * * * * *

[fol. 574] Q. That is your opinion, is it not, and you have so stated on numerous occasions, that this 55-cent rate if put into effect would reduce the average bills of residential consumers there in Laredo about twenty per cent over what they were paying under the 75 cent rate?

A. Yes, sir.

Q. And that is the amount of reduction that you as a houseowner there in Laredo would expect to get in your average bill under the 55-cent rate, is it not?

A. Yes, sir.

* * * * * * *

Q. Do you know approximately how many houses there are in Laredo having three rooms or better that are not equipped with gas?

A. No; I couldn't say.

Q. Do you know how many having four rooms or better that are not equipped for using gas?

A. I couldn't say.

Q. This twelve or fifteen hundred customers, from among what class of people would you expect those customers to come, Mayor Martin?

A. Well, from all classes of people—good laboring class or people getting all the way from one to three dollars a day.

[fol. 575] Q. Do you know anybody getting as much as three dollars a day that does not use gas in his house?

A. I have not made a particular study of it. I don't know definitely.

Q. Do you know anybody that is getting as much as two and a half a day that does not use gas down there?

A. I have not gone into that particular feature of it.

Q. Do you know whether this twelve or fifteen hundred customers, what part of them are located on the same streets the Company has lines on?

A. No; I couldn't say that either.

Q. Do you know what part of them the Company would have to extend its mains to in order to reach?

A. I do know, Mr. Coates, if you had a map of the City of Laredo, what it would cover. If you are familiar with the City, most of the population in the City of Laredo lies between, north of the Texas-Mex. tracks, if you know where they are?

A. Yes.

A. —and west of what we call the Arroyo Zacate. In a number of instances in there there are twenty-five or thirty houses to the block; and it covers probably from the Arroyo Zacate to Santa Maria Avenue, and from Bruni Street to the Tex-Mex. tracks.

[fol. 576] Q. What size blocks are those?

A. About 330 feet.

Q. What size house are they?

A. Well, the majority of them, I guess, are three to five-room houses.

Q. Each occupied by a single family?

A. Yes, sir.

Q. And is that section largely populated by people of Mexican extraction?

A. Yes, sir.

Q. And it is in that area where you think these twelve to fifteen hundred customers could be picked up largely?

A. The majority of them.

Q. Can you state about what per cent of the twelve to fifteen hundred would be picked up there?

A. Around 700.

Q. In your judgment?

A. Yes.

Q. And what about the remainder of them?

A. The remainder would have to go over there east of the Creek, and what is known as the Colone Hidalgo.

Q. And what size are the blocks over there?

A. About the same.

[fol. 577] Q. Just about the same character of residential section as the one you have just previously described?

A. No; it is probably a little better construction.

Q. A little better construction?

A. Yes, sir.

* * * * * * *

Q. But you think of the twelve to fifteen hundred customers, by far, or practically all of them would be picked up in those two areas?

A. The majority of them, yes.

Q. And is there any other area of like kind that you have in mind?

A. Naturally, I have it distributed all over the town, Mr. Coates.

Q. But these are the two principal areas?

A. Yes, sir.

Q. And are there residential sections such as these in other parts of the town where you think the balance of the twelve to fifteen hundred would be picked up?

A. Yes; I think they would be picked up down in an area south of Iturbide Street to the River, and west of Santa Eduardo Avenue.

* * * * * * *

[fol. 578] Q. Then the installation for cooking which you would expect from these additional consumers would be a hot plate, would it?

A. Yes.

Q. And you would likewise expect them to install one or two lights for using gas for lighting?

A. Yes.

Q. And likewise expect them to put in a space heater?

A. Yes.

Q. And about what type or size of space heater?

A. Oh, a small one, $3.50 to $4.50 worth.

Q. A $3.50 to $4.50 space heater?

A. Yes.

Q. And about what would that hot plate cost; do you know?

A. About the same approximately.

Q. And so for an investment of six to eight dollars in yard service lines, and say seven to nine dollars in hot plate, space heater and light jet, you think they would become consumers of gas?

A. A total investment of how much?

Q. Six to eight dollars in yard service line, an average of four dollars for the hot plate and four dollars for the space heater and one dollar for the two light jets; why they [fol. 579] would then be equipped to use gas?

A. Yes. I know of a lot of them that had it, Mr. Coates, and discontinued it.

Q. And they discontinued about that character of use, did they?

A. Yes.

* * * * * * *

(Plaintiffs rest.)

[fol. 580] Defendant's Surrebuttal Testimony

[fol. 581] J. V. Strange, a witness for Defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

* * * * * * *

A. I am Vice-President of the United Gas Public Service Company, in charge of distribution activities.

* * * * * * *

Q. Are there under you as Vice-President in charge of distribution the distribution operations in the city of Laredo, Texas, Mr. Strange?

A. Yes, sir.

* * * * * * *

Q. What do you style yourself as in the public utility business?

A. As an operating man.

Q. Mr. Strange, throughout your experience in the public utility business have you made a study as a practical operating man as to the ways of increasing the consumption of public utility service which the companies that you were then serving were engaged in selling?

A. I think I have.

Q. And have you given a great deal of study to rate structures which will promote the additional use of public utility [fol. 582] service, both in the field of electric service and in the gas service, both manufactured and natural gas?

A. I think I have.

Q. Well, now, Mr. Strange, have you found in your twenty-eight years of experience that there is a point at which the reduction of rates will not produce any substantial increase in consumption of the service and below which the reduction of rates simply means that much loss in gross revenues?

A. Yes, sir.

Q. Do you feel that the economic point or level to which you have just referred has been reached in Laredo with the rates sometimes referred to as the seventy-five cent rate, which is the rate of seventy-five cents per thousand cubic feet, ten per cent discount for prompt payment of bills, one dollar per month minimum bill?

A. Yes, I think that point has been reached in Laredo.

Q. Why?

Mr. Bobbitt: * * * Could we ask him a few questions on qualifications before you proceed?

Mr. Coates: Why, yes.

[fol. 583] Questions by Mr. Fitzhugh:

Q. Mr. Strange, where have you ever made a study of the effect produced by rate reduction on either customer consumption or the number of customers?

A. I have made such an investigation, as far as it was possible to make such an investigation, here in Texas.

Q. What town was that in?

A. Amarillo.

Q. Are the conditions in Amarillo anything comparable to the conditions in Laredo as an operating problem?

A. I think they are comparable to this extent: that the rates were reduced there even more in percentage than the reduction we are discussing here in the case of Laredo.

Q. You are familiar with the general territory around Amarillo?

A. Fairly so.

• • • • • • •

Q. Well, you know as an operating problem, don't you, Mr. Strange, that there are no competitive fuels with gas for heating in Amarillo?

A. No, I don't. I am not sufficiently familiar with what other forms of fuel might be available there.

[fol. 584] Q. You know, too, do you not, Mr. Strange, that the conditions of climate that prevail in Amarillo make a very high customer consumpation as compared with Laredo?

A. Of course, I realize that more gas would be required in Amarillo than in Laredo.

Q. Where you have about a three or four months' winter season at Laredo, you have about a six to nine months' gas season—winter season at Amarillo, do you not?

A. Yes, but I don't see that that would make any difference in reducing the rates leads to increased consumption. It seems to me that it should be true in the case of Amarillo, as it is contended it would be true in the case of Laredo.

Q. Well, are you willing to have this Court and jury think, Mr. Strange, that a study of any effects produced by a rate reduction in Amarillo would be comparable with a like reduction in the town of Laredo?

A. Yes, sir; I think it is very comparable.

Q. What other towns have you investigated?

A. I have investigated on our own system other towns fairly comparable to Laredo where the rates are higher, and at higher rates the consumption is even greater than it is in Laredo, which has convinced me that within a ra-ge of, say, fifty cents a thousand to a dollar a thousand natural [fol. 585] gas still is so cheap that those who can afford to use it at any reasonable price would do so.

Q. What other towns are you referring to now?

A. I am referring particularly to Robstown and Sinton, which are in approximately the same latitude as Laredo and seem to be the most comparable towns in which our company operates.

Q. What is the population of those two towns?

• • • • • • •

A. I think in the two towns the population is between eight and ten thousand people.

Q. You mean the two together?

• • • • • • •

A. About four thousand in Sinton and about six thousand in Robstown.

Q. Now, at Sinton, Mr. Strange, what are the conditions as to competitive fuel?

A. I think they are approximately the same as in Laredo.

Q. Are there available anywhere near Sinton supplies for wood?

A. I think just practically the same as would be found at Laredo.

[fol. 586] Q. Is that true of Robstown also?

A. Yes, sir.

Q. Now, Mr. Strange, doubtless you recorded all the results of your study of both the towns of Robstown and Sinton, as well as that of Amarillo,—is that true?

• • • • • • •

A. I have records as to the sales of gas to residential customers in each of these towns—Laredo, Sinton, and Robstown, and——

Q. Do you have the same for Amarillo?

A. And the average rate paid by residential customers in each of the towns.

Q. What other towns have you studied besides those three?

A. I think that is about all that I have studied recently.

Q. Now, outside of Amarillo, Mr. Strange, you have not studied any town at all where there has been a rate reduction, have you.

A. I thought Amarillo was the very best example that could be taken, because the reduction there was comparable to the reduction contemplated here, and was made in recent years.

Q. Now, answer my question, please, sir.

• • • • • • •

[fol. 587] A. I have not, because I don't know of any other town where a rate reduction has been made in Texas.

(Plaintiffs object to qualifications of witness, objection overruled.)

Direct examination resumed.

Questions by Mr. Coates:

Q. Mr. Strange, in making your duties in connection with Amarillo, have you informed yourself and taken into account the difference in the climatic conditions which prevail in Amarillo, Texas, which is in the northernmost part of the State, as compared with the climatic conditions in Laredo, which is one of the most southerly towns in the State?

A. I have.

Q. And have you informed yourself with respect to the degrees of cold or what you term in the gas business the temperature at which the householder will normally use gas for house heating, in respect to Amarillo and in respect to Laredo?

A. I have.

* * * * * * *

Q. Now, Mr. Strange, based on your studies which you have outlined, both in respect to Amarillo and in respect [fol. 588] to Sinton and Robstown, where, as I understand you, both higher rates and higher consumption than in Laredo prevail,—what, in your judgment, would be the effect, in respect to increased consumption by existing consumers, of reducing the residential rate from 67½ cents, net, to 55 cents, net?

A. I think such a reduction would simply mean that the customers would make the saving represented by the difference, and that the company would suffer the loss in its revenues, and that no appreciable amount of increased gas consumption would ensue, nor would additional customers come on the line by reason of this reduction.

(Plaintiffs extend previous objection to the entire line of testimony.)

Q. Do you know when the residential rate was reduced in Amarillo?

A. It became effective in April, 1931.

* * * * * * *

Q. And do you know what the percentage reduction in rate was in 1931?

A. As I have said, the rates were reduced in 1931. Taking the average price paid per M. C. F. by all domestic customers in 1930, the first full year before the reduction [fol. 589] became effective, and taking the same figure for the year 1932, the first full year after the rate reduction became effective, it shows that the rates were reduced 24.52 per cent.

Q. Now, do you know the percentage loss in revenues brought about by this 24.52 per cent reduction in the domestic rate, as reflected by a comparison between the first full year or the last full year in which the higher rate was in effect, and the first full year in which the reduced rate was in effect?

A. There was a reduction—a corresponding reduction in revenues of 23.34 per cent.

Q. Mr. Strange, you heard Mayor Martin's testimony as to the twelve or fifteen hundred additional customers that he would expect the company to add at the 55 cent rate?

A. Yes, sir.

Q. And you likewise heard his testimony with respect to the character of use which he, knowing these people, would expect them to make of the gas?

A. Yes, sir.

Q. Based on your experience, Mr. Strange, and your knowledge of average residential consumptions in Laredo, what annual consumption of gas would you expect an [fol. 590] installation of this class to show on an annual basis—that is, an installation or a small house equipped with a gas hot plate and a four dollar space heater, and one to two gas lights, as compared with the average residential consumption in Laredo?

A. I think such a customer would consume on an average approximately forty per cent of as much gas as is now being consumed by the present average residential customer in Laredo.

Q. Now, have you made any computation to show the saving to such a consumer at the rate of 55 cents, net, ten per cent penalty for non-payment within ten days, and a dollar minimum bill, as compared with the 75 cent rate, ten per cent discount and dollar minimum bill?

* * * * * * *

A. Residential consumption. Our average residential consumption for 1933 from our present customers in Laredo was 37,000 cubic feet.

Q. Exactly or approximately?

A. Approximately 37,000 cubic feet.

• • • • • • •

Q. And that is the annual average?

A. That is the annual average—that is the average consumption for '33—1933. I think it would be liberal to pre- [fol. 591] dict that a customer of this type would use as much as 15,000 cubic feet per annum, because obviously during the month when heating—room heating is not required, using just a plate and a little gas jet, not more than 1,000 cubic — of gas would be used. Our present average consumption in the summer months in Laredo falls below 2,000 cubic feet from those customers, many of whom are using gas for purposes that could not be used by this type of customers. Now, assuming that this type of customer would use 1,000 feet of gas for nine months in the year, and then would use 2,000 cubic feet in the remaining three months of the year.

Q. That is, the heating season?

A. In the heating season, thus accounting for the annual consumption of 15,000 cubic feet, and computing those monthly consumptions at the rate of 55 cents, net, with a dollar minimum, and the present 67½ cent rate, net, with a dollar minimum, we find that the saving as against the two rates would amount to seventy-five cents in twelve months, or approximately six cents a month. I am certain that those customers who can not afford to use gas now [fol. 592] would not be induced to put it in because of a saving of six cents per month.

• • • • • • •

Q. Now, Mr. Strange, I believe the term which is sometimes used in respect to computations of rates—just a minimum monthly bill—that is, the revenues to be derived at those rates, is to state the point at which the rates cross—isn't that the term used?

A. Yes, sir.

Q. And what do you mean by the term "the point at which the rates cross"?

Q. There is a point where the 55 cent, net, rate would result in a lower rate, depending upon the consumption, than the present 67½ cent rate. That point of consumption is approximately 1500 cubic feet—I believe, to be exact, 1480 cubic feet; so that any customer using less than 1480 cubic feet per month would not be benefit-ed by the 55 cent, net, rate.

Q. Why not?

A. Because the minimum of one dollar would result in the same charge as the present rate.

Q. Under each rate?

A. Under each rate.

• • • • • • •

[fol. 593] Cross-examination.

Questions by Mr. Bobbitt:

Q. If I understand your conclusion and opinion about these users of small amounts of gas, you have just testified about, they are not profitable or desired customers by the gas company?

A. I think customers of that type would be a burden on the present customers.

Q. I say they are not desired by the company.

A. We desire all customers, but because of the investment that would be required to serve them, the increased operating expenses that would be incurred, and the very small revenue that would be obtained, it would be a burden on the present customers.

Q. And, as I say, that group of customers, then, are not desired by the gas company?

A. For the reasons I have stated, yes.

• • • • • • •

Q. You have never tried a reduction of rates, have you, as to whether or not it would bring increased consumption or increased number of customers?

A. I think we have made reductions and have studied the effect of them.

[fol. 594] Q. I say have you tried the reduction of rates in Laredo, or Robstown, or Sinton, where you testified about?

A. No, because I——

Q. I didn't ask you why. You haven't tried any rate reductions, have you?

A. No, sir.

Q. And you don't serve Amarillo, do you?

A. No, sir.

Q. You don't know anything about the situation at Amarillo, except your investigations and what you say other folks have told you about the conditions there; in other words, you don't operate there, and you have never had any experience in the City of Amarillo in the gas business.

A. I haven't operated in * * * Amarillo.

Q. How many cities does your concern serve in Texas, Mr. Strange?

A. We serve 115 towns and cities in the State of Texas.

Q. Yes, sir. You have never tried a rate reduction in any of those cities, as to whether it would bring increased revenues through increased volume of sales or increased number of customers?

A. No, because our gas rates are already very low, Mr. Bobbitt.

[fol. 595] Q. Yes, sir. I didn't ask you why—whether they are high or low; that is a matter of opinion, of course.

A. I thought you would like to have the reason.

Q. I will ask you, Mr. Strange, thank you, if I desire the reason. Well, now, you have never tried reducing the rates in the City of Laredo for industrial purposes, as to whether that would bring increased customers or increased consumption, have you?

A. Yes, sir.

Q. When?

A. Well, notably in the case of the American Service Company—the ice company.

Q. You reduced that to seventeen cents, didn't you?

A. As soon as their contract expired the rate was reduced materially, and the consumption did not increase as the result of that fact.

Q. That reduction came, of course, during a period, as has been testified here, during a period of depression, didn't it—general depression?

A. During the last two years.

* * * * * * *

Q. And you pay for the gas in the field, four or five cents, whatever it may be, and you transport that gas through these

[fol. 596] mains and these facilities that are established and must be maintained, as I understand, to meet your residential and other requirements in the city of Laredo. That is true, is it not?

A. We have to maintain our facilities to supply our customers in Laredo, yes.

Q. And the facilities through which you are transporting gas and serving your customers in the City of Laredo, are of much larger capacity than necessary for the present purposes?

A. I don't know that that is true.

Q. Well, don't you know that you could carry a larger or transport a much larger volume of gas through the existing facilities from the Carolina-Texas field to the City of Laredo than you are now carrying?

A. * * * I don't know that, Mr. Bobbitt.

Q. You don't know?

* * * * * * *

A. That is an operating problem of the transmission and pipe line system and with which I am not connected in an operating capacity at all.

Q. Just what are you connected with?

A. With the distribution system.

* * * * * * *

[fol. 597] A. The average price paid by residential customers in Laredo during 1933, for all gas requirements, was $26.69.

Q. For residential purposes?

A. Yes.

The Court: Is that per year?

A. Yes, during the year 1933.

Q. What was it during 1932?

A. I haven't the figures for 1932, Mr. Bobbitt; but it was approximately the same.

Q. * * * what are your duties with the company?

A. I have supervision over all the operations of our distribution properties.

Q. You have nothing to do with the transmission?

A. No, sir.

Q. What do you mean by supervision over those distribution properties in Laredo?

A. Well, I and my assistants have general supervision of all of the activities of our various distribution organizations in the operating work.

Q. They work under your direction?

A. Yes.

* * * * * * *

[fol. 598] Q. What affiliated companies do you serve, along with the United Gas Public Service Company?

A. Well, there are some subsidiary companies of the United Gas Public Service Company.

Q. What are they, the ones that you serve as vice president, or in any other capacity?

A. The ones with which we have distribution operations are the Northern Texas Utilities Company, the Houston Gulf Gas Company, the Southern Gas Utilities Company, and the Houston Gas & Fuel Company, which is an indirect subsidiary. I believe I have named all of them.

Q. Any of them operating down in the Laredo district?

A. I believe not.

* * * * * * *

Q. You serve all those companies?

A. They are all connected, as part of the United Gas System.

Q. Are you an officer in the United Gas System?

A. The United Gas System as such is just a name, Mr. Bobbitt. There are no officers of that, as the United Gas System.

Q. It is not a corporation?

A. No, sir.

Q. What is it?

A. It is just a name that is given to the group of companies.

* * * * * * *

[fol. 599] A. D. GREENE, recalled.

Questions by Mr. Coates:

Q. Now, Mr. Greene, in your judgment, as an engineer, taking into account the peak demands for gas to be ex-

pected in the City of Laredo, is there what you term an excessive capacity in transmission lines leading into Laredo at this time, likewise taking into account the gas pressures, as you understand them, in the fields?

A. Of course, the capacity of the line is limited by the pressure existing at the wells and by the pressure at which it is necessary to deliver the gas to the city gate, as well as the length and size of the line; and considering the pressures which are available in Carolina-Tex. the capacity is very little in excess of the actual requirements.

Q. And is it sufficiently in excess so that if you were re-designing this system at this time you would cut down on the size and capacity of that line?

A. No, sir; if we were re-designing the system at this time we would have at least as much capacity as exists in the system at present.

Q. In designing these transmission lines do you try to cut down the size of the pipe, so as to be just sufficient [fol. 600] or no more than sufficient to take care of the then peak hour—peak day demands of your market?

A. No, sir, it is considered good engineering practice to design for slightly in excess—somewhat in excess of the present demand.

* * * * * * * *

[fol. 601] JOHN S. IVY, a witness for Defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name and by whom you are now employed.

A. My name is John S. Ivy, and I am employed by the United Gas Publ' Service Company.

Q. In what capacity?

A. Chief Geologist.

Q. How long have you been employed by this company and its predecessor companies?

A. Eleven years.

* * * * * * *

Q. And since 1923 in what character of geological work have you been largely engaged?

A. I have been in charge of all of our exploration work, involving the drilling and development for natural gas as well as oil.

Q. Have you been engaged in the computation and estimation of gas reserves?

A. Yes, sir, during the time of my employment with the company.

Q. Covering what States?

[fol. 602] A. Louisiana, Arkansas, Mississippi, Texas, New Mexico, Montana and Pennsylvania.

Q. State whether or not any gas pipe lines have been built for which you estimated the gas reserves to take through those pipe lines.

A. A pipe line extending from the Monroe field, in Ouachita Parish, Louisiana, to Baton Rouge, Louisiana, now operated by the Interstate Natural Gas Company; a pipe line extending from the Monroe gas field to St. Louis and Alton, Illinois; the pipe line that extends from Tioga field in Northern Pennsylvania to the vicinity of Williamsport, Pennsylvania; a pipe line from Cut Bank field in Montana to Butte and Anaconda, and an additional line in Southern Montana from the Bear Creek field to Bozeman and Livingston; a pipe line from Cotton Valley to Shongaloo.

Q. Is that in Louisiana?

A. Yes, sir, and from the Springhill field located in Webster Parish, Louisiana, to the city of Shreveport. Also, I have estimated the reserves behind various and sundry extensions of our system as it now exists.

Q. With reference to those pipe lines that you have enumerated, and in order to give some idea of the extent of the work, can you state approximately the expenditures involved in those lines?

[fol. 603] A. I don't know their exact cost, but offhand I think that it would be in excess of fifty million dollars.

Q. As Chief Geologist of the United Gas Public Service Company, what are your principal duties, Mr. Ivy?

A. My principal responsibility is to supervise the Geological Department, to see that adequate reserves are maintained behind our markets.

Q. And is there any rule that this company follows with respect to the amount of gas reserve definitely under con-

tract or owned which it has behind the supply of gas to its markets?

A. Yes. We feel that the gas reserve behind any specific market should never be allowed to get below ten times the annual demand.

Q. And is it part of your job to see that that situation exists with respect to all of the markets served by United Gas Public Service Company and affiliated companies?

A. Yes, sir.

Q. And is it a part of your duties to keep constantly up to date with respect to the gas reserves available in the territory served by United Gas Public Service Company and affiliated companies?

[fol. 604] A. Yes, sir.

Q. Are you acquainted with the gas fields available to the Laredo market, Mr. Ivy?

A. Yes, sir.

Q. What are those fields?

A. The Carolina-Tex. field, the Jennings field, the Martinez field, the Cole-Bruni field.

* * * * * * *

Q. Please state the results of your estimate of the gas reserves in the Carolina-Tex. field remaining and susceptible of economic recovery.

A. I estimate that there is now approximately three billion feet remaining that can be counted upon to be recovered.

Q. Does that estimate cover the entire field, or simply that portion of the field under purchase contracts or where leases are owned by United Gas Public Service Company or affiliated companies?

A. That covers the entire Caroline-Tex. field, and includes the Rosenberg area, which is located immediately west of the field.

* * * * * * *

Q. Mr. Ivy, do you know at what approximate pressures past experience has shown that wells in the Carolina-Tex. field go dead, if they do go dead?

[fol. 605] A. Yes, sir. In the Mirando sand, often referred to as the two thousand foot sand, wells that have gone dead have gone dead at an average pressure of 310

pounds. There has been a total of twenty wells completed in that horizon, of which have been either abandoned or are dead at this date and only four producing.

Q. Now, by "go dead" what do you mean?

A. They fail, due to the lack of volume or due to the fact that they fill up with water.

Q. Due to water coming into the well and the line instead of gas?

A. Yes, sir.

Q. Proceed with your explanation.

A. In the twenty-two hundred foot sand the wells have gone dead at an average 280 pounds pressure. There are now five wells producing on the pipe line and one well that is not connected to any line; two wells in this horizon have gone dead. In the twenty-six hundred foot sand the wells have gone dead at an average pressure of 192.5 pounds; there are four now producing gas and five have gone dead. The three thousand foot sand is entirely depleted; the wells that produced gas from that horizon are all dead at this time.

[fol. 606] Q. Now, Mr. Ivy, assuming that gas is withdrawn from the Carolina-Tex. field in 1934 and subsequent years at the same rate at which it has been withdrawn in 1933, approximately how long will the field continue to supply gas to the Houston Pipe Line Company and United Gas Public Service Company and its affiliated companies?

A. Well, the reserves are approximately three billion feet. The production for the year 1933 was 1,159,000,000, so that it would indicate that there is about three years life on the basis of the withdrawals.

Q. Do you expect all of those wells to go dead at the same time?

A. No, sir.

Q. With respect to the existing pressures in those wells in their relationship to the pressures at which wells have been found to go dead, are the existing pressures substantially above, you may say the average pressures at which such wells have been found to go dead?

A. Only in the case of the twenty-two hundred foot sand and the Rosenberg sand.

Q. What are the wells producing in the Rosenberg sand?

A. There are about eleven completed in the Rosenberg

sand, and there are five wells producing from the twenty-two hundred foot sand.

[fol. 607] Q. Now, without going into technical details, what method do you use for computing gas reserves susceptible of economic recovery?

A. Where we have adequate data about pressures we use the reduction decline method, which is based on Boyle's law, and where we do not have sufficient history to use it the pore space method is used.

• • • • • • • •

Q. In the language of a layman, is that an attempt to compute the space which exists in the sand which may be occupied by gas between the grains of sand?

A. The pore space method is.

Q. What is the pressure decline method that you spoke about, briefly explained?

A. Boyle's law states that the volume of gas varies inversely proportional to the absolute pressure at constant temperature. To simply explain the behavior of that law, if one will think of this room as a tank susceptible of being placed under pressure if gas were taken into it, we will assume we don't know the volume of this space at all, and assume that this tank of unknown volume has a pressure of, we will say, fifteen hundred pounds, and we meter gas out of that tank until the pressure is dropped [fol. 608] down to 750 pounds, and we will say that we have produced one million cubic feet during that interval; then we know that the initial volume present in the reservoir was two million feet and that the remainder is one-half, or one million feet.

Q. • • • As the Carolina-Tex. field depletes, Mr. Ivy, from what field do you plan to get the gas to serve Laredo?

A. The Jennings field, which, of course, puts gas into the Laredo system, and the Martinez field and the Cole-Bruni field.

Q. Where is the Martinez field with respect to the Jennings field?

A. It is located southeast of the Jennings field, approximately ten miles.

• • • • • • • •

Q. Mr. Ivy, did you have anything to do with the connection that exists, if it does exist, between the Cole-Bruni line and the Carolina-Tex. line that is shown on the map there in the uncolored section, being the map which is marked Map 2—did you have anything to do with that line there?

[fol. 609] A. As I recall it, that line was extended across from the gathering system, and in 1930 when we acquired the properties there was no definite information, and in view of the pressures at which wells were going dead at that time it was imperative that we make that tie-in in order to make the Cole-Bruni reserve available to the Laredo market.

Q. Was that tie-in made on your recommendation?

A. I believe it was.

Q. And the wells to which you refer as going dead at that time were the wells in the Carolina-Tex. field?

A. Yes, sir.

Q. Mr. Ivy, based on your experience in the study and estimation of gas reserves as the basis of constructing gas transmission lines and your experience in keeping available adequate supplies of gas for the markets served by United Gas Public Service Company, what is your opinion with respect to whether or not provision for an adequate and uninterrupted supply of gas for Laredo would be made at the present time from a connection solely with the Carolina-Tex. field?

A. To rely only on the Carolina-Tex. gas to support the Laredo market, I think, would be extremely foolhardy and very negligent.

[fol. 610] Q. Now, as gas is brought to the Laredo market from the Jennings field and the Carolina-Tex. field, through what line will it be brought to Laredo?

A. Well, it would flow from the gathering system of the Martinez Field, in the case of that field, through a line that ties into Jennings Junction or thereabouts; I am not familiar with the detail of it; and thence down the pipe line from Jennings Junction to Pescadito Junction, and thence into Laredo.

Q. How do you plan, if it is necessary, to bring gas to Laredo from the Cole-Bruni Field?

A. It would pass across this line (indicating on map), from the Cole——

Q. Are you now referring to the line close to the Bruni Compressor Station connecting with the main trunk of the line in the Carolina-Texas Field?

A. Yes, sir, this line across there (indicating).

Q. And from that point how would it get to Laredo?

A. It would pass town through the line to Aguilares and to Pescadito Junction, and thence into Laredo.

Q. And was that the purpose for which that connection was made?

A. The physical connection, yes, sir.

• • • • • • •

[fol. 611] Q. Well, why would you say that the provision for gas for Laredo by a connection with the Carolina-Texas Field only would be foolhardy?

A. We don't know just when the wells will go dead and cease to produce. From the past history, and the death rate of the wells, why, they might not be producing a year from now, even in the 2200 foot horizon, and the 2000 foot sand here is so nearly depleted and in such a precarious position that I just don't feel that it could be counted on for any support to the Laredo market at all; and the same thing is true of the Webster 2600 foot sand.

Q. And you say that the 3000 foot sand is already dead?

A. Is already depleted, yes, sir.

Q. Do these wells give any advance notice of the time that they are going to go dead?

A. No, sir, not in so far as I am aware.

• • • • • • •

Q. And are the Rosenberg wells which you have included in your computation of the three billion feet, are they connected to the system of United Gas Public Service Company at this time?

A. No, sir.

[fol. 612] Q. But you have included those wells, even though under no purchase contract or any obligation to furnish gas to the United, in order to take in the entire Carolina-Tex. and related areas?

A. Yes, sir.

Q. Now, do you feel, based on your experience, certain that the supply of gas for Laredo in the reasonably near future—that is, the entire supply will come from the Jennings and the Cole-Bruni Fields?

A. Yes, sir, and together with the Martinez Field. That also will support it.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. Well, you are taking gas from the Carolina-Texas Field, aren't you, from wells that were producing some time ago and then stopped which have come to life and are producing a large flow?

* * * * * * *

A. The wells that were abandoned were deepened to other horizons. In one or two—in a few cases it has been possible to go back into wells and clean them out and lower them, so [fol. 613] they would be able to produce a little longer; but in those cases there has not been any significant amount of gas produced after the reworking jobs, other than the deepening.

Q. Yes. You didn't plan to take gas from the Fansler Field down there until they discovered it, did you? * * *

A. Of course, our work all the time contemplates the development of new reserves that are not now discovered, and, of course, we can't count potentialities into a reserve picture until the gas is actually in sight.

Q. I understand; but I believe you testified that all you are giving is an estimate and your opinion and judgment about that?

A. Exactly, yes, sir.

Q. And there may be ten times as much gas in that area as you now have, so far as you know?

A. Yes, sir, that is true.

* * * * * * *

Q. Well, your concern is taking—you have two transmission lines running out of the Carolina-Texas Field to San Antonio, haven't you?

A. No, sir.

Q. You have how many?

A. We don't have any line running out of the Carolina-[fol. 614] Texas Field to San Antonio. We do have this

physical tie from the Carolina-Texas Field over to a point north of our Bruni Compressor Station in the Cole Field.

Q. Well, your concern is taking gas out of the Carolina-Texas-Bruni Fields and supplying San Antonio and New Braunfels and Austin, and other points in this vicinity, aren't you?

A. Well, those fields are separate and distinct fields, Mr. Bobbitt.

Q. Well, you are taking gas from those fields and supplying it up here, aren't you?

A. We are not taking gas, in so far as I am aware, from the Carolina-Texas Field and moving it into the San Antonio market.

Q. Well, are you taking it from the——

A. The gas that is moving into the San Antonio market is being obtained in the Cole and Bruni Field, roughly outlined here (indicating on map).

Q. Yes.

A. And part of it flows up the line indicated there, through the twelve inch line, and the other part flows out northeast through the fourteen inch line, where additional gas is obtained from the Agua Dulce Field——

[fol. 615] Q. Yes.

A. And from the Sandia Field en route to San Antonio; and also there is gas into the San Antonio market that comes out of the Refugio area at times.

Q. All right; are you through.

A. Yes, sir.

Q. All right. You are taking gas, as you have testified, from the Bruni Field or the Carolina-Texas Field?

A. Not the Carolina-Texas Field.

Q. Well, say, the Bruni, and you are furnishing the Houston market.

A. No, sir.

Q. You are not taking gas out of the Bruni Field and furnishing the Houston market?

A. No, sir.

Q. Where do you take that gas to?

A. The Houston gas fields.

Q. Where are you taking the gas to from the Bruni Field through those lines? That is what I am asking you.

A. To San Antonio.

Q. Where else?

A. That is the only place it flows to.

Q. And it comes on up to New Braunfels and Austin, doesn't it?

[fol. 616] A. Oh, yes. I had in mind the San Antonio market.

Q. Yes. The Houston Pipe Line Company has a large transmission line running out of the Carolina-Texas or the Bruni Field to Houston, have they not?

A. Yes, sir; and they move gas eastward into the Houston market from Carolina-Texas.

Q. Taking large volumes?

A. I don't know just what their daily rate is, but the production I gave a while ago for 1933.

Q. Now, this supply down here that you say in the Jennings Field that you are counting on furnishing Laredo with, you are sending—nearly all the gas you are taking you are sending that to Mexico, aren't you, and down the Valley.

A. The principal gas movement to Mexico is from the Martinez area at this time and from two wells in the Jennings Field.

Q. Yes, sir.

A. But those wells and the gas there is also available for Laredo.

* * * * * * *

Q. The construction and building of those numerous transmission lines, you have testified about indicates that [fol. 617] the people recommending their construction had known there were a lot of gas reserves in that field, didn't they—isn't that true?

A. There is no doubt about that, or they would not have gone to that expense.

* * * * * * *

Q. All of those transmission lines have been constructed subsequent to the Laredo line?

A. Yes, sir, that is my understanding.

* * * * * * *

Redirect examination.

Questions by Mr. Coates:

Q. Now, Mr. Ivy, I believe your testimony shows that of the gas taken from the Carolina-Texas Field in 1933, ap-

proximately 43 per cent of the total take there was by United Gas Public Service Company, and the remaining per cent was taken, so far as transmission lines were concerned, by the Houston Pipe Line Company?

A. Yes, sir.

Q. Now, if United should cease taking gas from the Carolina-Texas Field, what company, in your judgment, would get the remaining amount of the available gas reserves in that field?

A. The Houston Pipe Line Company.

* * * * * * *

[fol. 618] Recross-examination.

Questions by Mr. Bobbitt:

Q. There is a whole lot of territory down there in that country that has not been explored yet, isn't there, Mr. Ivy?

A. There certainly is.

* * * * * * *

[fol. 619] R. H. HARGROVE, a witness for the defendant, upon being recalled, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Your name is R. H. Hargrove?

A. Yes, sir.

* * * * * * *

Q. And I believe you testified that you were Vice-President, in charge of production and transmission for United Gas Public Service Company and affiliated companies?

A. Yes, sir.

* * * * * * *

Q. Now, Mr. Hargrove, during 1933 under your direction was a considerable amount of work done in reconditioning

what has been referred to in this record as the Jennings-Pescadito line?

A. Yes, sir.

Q. Do you know in a general way on what part of that line that reconditioning work was done—that is, whether on the upper or lower or middle part?

A. Well, it was slightly south of the middle section, as I recall it, that the principal work was done.

Q. And what was the occasion for doing that work, Mr. Hargrove?

[fol. 620] A. The pipe was in bad condition, and it was necessary to put new pipe in and recondition some sections of the old pipe and replace it.

Q. Why?

A. It had developed an excessive number of leaks at primarily two hot spots in the line.

Q. And what was your purpose in spending this money to get that line back in good condition?

A. To have it in first-class condition to serve the Laredo market through it.

Q. And was that why that money was spent?

A. Yes, sir.

Q. Now, Mr. Hargrove, do you contemplate any further work on that line during 1934?

A. Yes, sir, we plan to recondition about four miles up at the north end of the line, a short distance south of the check meter as shown on that map. We are, in fact, starting on that work now; some of the pipe is on the ground, I believe.

Q. Why are you doing that work?

A. For the same reasons as stated why we did the work in 1933.

[fol. 621] Q. And when that work is done what, in your judgment, will be the condition of that line?

A. It will be in very satisfactory working condition, in my opinion.

Q. Mr. Hargrove, it has been testified here that the purchase price of gas in the Carolina-Texas Field during 1933 was approximately 4.25 or 4.30 cents per M. C. F. at the well-head. Is the price paid to the well owner for gas delivered at the well-head the only expense that United Gas Public Service Company, as purchaser of that gas, incurs

in connection with and reflected in the cost of purchased gas?

A. No, sir, we have an added expense incident to the maintaining of reserves for the system and exploratory work in connection therewith, that is an actual expense over and above the actual amount paid the well owner.

Q. And why don't you just simply rely on independent well owners drilling you wells as you need them and buying all your supply—your gas, instead of keeping on hand reserves yourself and doing exploratory work?

A. The ordinary form of contract under which gas is purchased at the well imposes no obligation on the well [fol. 622] owner other than to deliver such gas as he may have available for delivery; he has no obligation to acquire additional reserves, to drill additional wells, or even to recondition the wells that are already drilled, and obviously we can not rely upon a continued service upon such a condition as that. We have to be in a position to meet the demands of the public by maintaining large reserves of our own that we are in a position to develop as a new occasion arises.

Q. And if you shouldn't do that, and should wait until about the time that the supply from the existing wells was depleted before going out and acquiring gas reserves and getting gas in sight, what would be the situation with respect to serving the company's markets?

A. We might not be able to get it at that time, and the company's markets would be without gas, and our business would be gone.

Q. In your judgment and with respect to the Carolina-Texas Field, does the over-all price of five cents per M. C. F., to represent the cost of purchased gas as distinguished from the purchase price of gas from the independent well owner, represent a very close approximation of the cost of purchased gas?

[fol. 623] A. Yes; we ordinarily figure that we have about a twenty-five per cent increase over the actual purchase price to represent the other cost to us.

Q. And does it work out that way?

A. Yes, sir, in practice it does.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

• • • • • • • •

Q. Well, what is Mr. Abernathy? I thought he was in charge of the transmission operations.

A. Mr. Abernathy is Superintendent of transmission operations, which is—in his duties he reports to me.

Q. Oh, you are in charge of the transmission operations and he is superintendent?

A. Yes, sir.

Q. You don't have anything to do with the operations down there in the field, do you?

A. Well, all problems arising from them of any importance are referred to me for decision.

Q. He reports to you?

A. Yes, sir.

Q. And you decide them?

A. Yes, sir.

• • • • • • • •

[fol. 624] A. No, my sole affiliations are with the United Gas Public Servite Company and its affiliated companies.

Q. Mr. Abernathy reports to you about those things, and you report to Electric Bond and Share Company, don't you?

A. No, sir, I do not.

Q. Don't you report to one of these sponsors of production or transmission?

A. No, sir • • • I do not. The sponsor spends some time on our properties and confers and advises on different problems. I report to the President of the Company and the Board of Directors.

Q. The sponsor counsels with you?

A. And the other officers of the Company.

Q. And the other officers of the Company, and with Mr. Abernathy?

A. Occasionally.

Q. And then after he gets through, then he reports, of course, to his principals in New York?

• • • • • • • •

A. Yes, sir, I know that he does.

• • • • • • • •

Q. Now, about this exploratory expense which you state the Company goes to in securing gas, in addition to the [fol. 625] purchase price of it, do you mean that you have an exploratory expense in connection with the buying of gas from these boys—these independent boys that drill the gas down there and sell it to you?

A. We have an expense of around $300,000.00 a year maintaining an exploration department, and this is maintained for the purpose of obtaining reserves, partially from our own production and partially from purchases.

Q. Was any of that $300,000.00 spent for the benefit of or in connection with the discovery or the drilling for gas for delivery to your company?

A. Indirectly, yes.

Q. How far indirectly?

A. Of course that could not be stated definitely, but all the exploratory work we do does not mean just for our own production, but if we are in that area and if we find or if we believe it is likely territory, which is owned by independents, and they are drilling the property, we sometimes lend them money to drill it in order to find out the possibilites of it for the purpose of having it available for our operations.

Q. And pay them three cents a thousand for it sometimes.

A. Sometimes, yes.

[fol. 626] Q. Suppose some boy wants to go out there and drill in Zapata and Jim Hogg county maybe, as many of them do.

A. Yes.

Q. They do their own exploring, don't they, and spend their own money and stand their own exploratory expense, don't they?

A. Not altogether.

Q. Have you ever made a geological report, at any expense to your company, and delivered them to an independent gas driller out in any of those counties?

A. I don't recall that we have ever put it down in writing and delivered it to them, but we have advised them many times and in fact we do every day. We maintain a department in Houston and we run their samples and make tests on their cores, without any service expense to them, and we do that in order to make it available to our

system if they do develop something, and that is the purpose of it.

* * * * * * *

[fol. 627] P. McDonald Biddison, a witness for the defendant, recalled.

Direct examination.

Questions by Mr. Coates:

* * * * * * *

Q. And have you either heard or read and studied, or both, Mr. Elrod's testimony to the effect that in spite of the fact that these transmission lines included in his appraisal, have existing in them substantial quantities of new pipe, installed since the date of the original installation of the line, and have been reconditioned one or more times, that the deduction he has made to reflect existing depreciation is, in the main, a computation of the number of years between the date of original installation times three?

A. I have.

Q. And I believe you testified that in your judgment a proper reserve accrual for transmission lines in this area would be six per cent per annum on the reproduction cost new of the properties?

A. That is correct.

Q. In studying this testimony, showing the results of Mr. Elrod's studies and observations, does that change your mind with respect to the six per cent per annum reserve accrual?

[fol. 628] A. No, my study of the testimony fortifies my opinion.

* * * * * * *

Q. Mr. Biddison, did your study disclose that the 33 year life on which or about which Mr. Elrod testified, contemplated the average span of years in service of these transmission lines, as lengthened by ordinary maintenance only, but contemplating retirements on account only of physical deterioration and corrosion?

(Plaintiffs object; objection overruled.)

A. That is my understanding of the testimony.

Q. Now, in computing reserve accruals, do you have to take into account not only retirements on account of physical deterioration and corrosion, but on account of other causes of retirement in the case of transmission lines?

A. You most assuredly do.

Q. Then does a 33 year average life, contemplating as it does retirements only on account of corrosion and physical deterioration, fairly represent the basis for computation of a reserve accrual to cover all causes of retirement and replacement?

. . . . . .

A. No, it does not.

Q. Why not?

. . . . . .

[fol. 629] A. Now, as I understand the question, I am asked why this three per cent accrual rate does not fairly represent the requirements?

. . . . . .

A. The reasons why this average life does not provide the basis for determination of the retirements and replacements requirements, is in the first place that if the life be on the average 33½ years, then unless the life of each individual constituent be 33 1/3 years, the rates of replacement due to physical deterioration will be alone in excess of three per cent, and secondly, the basing of the accrual rate on that average life figure, determined by physical deterioration alone, does not take into account the very important proportion of retirements and replacements caused by other reasons.

Q. What are those other reasons?

A. Shifting of gas fields; changing of streets and roads; growth of markets; shifting of markets; public requirements, and there are a host of other reasons that cause retirements and replacements of property in a system such as this.

Q. Have you made studies with respect to retirements of both gas transmission and gas distribution properties such as these, to determine what proportion of the retire-
[fol. 630] ments actually made were due alone to physical

deterioration and corrosion and what proportion were due to other causes?

A. I have.

Q. And what, as a general average, does that study disclose?

A. As a general average, it disclosed that on a distribution property the retirements and replacements are only about 70 per cent due to the physical condition of the equipment, and on a transmission property, it is a figure of the order of 50 per cent by retirements and replacements due to the physical condition.

Q. And the other or the remaining 30 per cent of the cases in distribution properties and the remaining 50 per cent of the cases in transmission properties, based on your study—are those retirements due to causes other than physical deterioration and corrosion, which you have mentioned?

A. That is correct.

Q. Mr. Biddison, where you have a property in which there has been a substantial number of replacements of joints of pipe and a reconditioning of substantial parts of the pipe and pipe line since the date of installation, does the application of an average life, such as the 33 years applied here, overstate or understate the depreciation actually existing in such property at the present time.

[fol. 631] A. In every case of which I have any knowledge it grossly overstates the accrued depreciation on the property.

Q. And by accrued depreciation, you mean the depreciation actually existing?

A. Yes.

* * * * * * *

Q. Mr. Biddison, why do you state that the application of a 33 year life of the character shown here to reflect existing depreciation in transmission lines, in which there have been a substantial number of replacements of joints of pipe since the date of installation, and a substantial reconditioning of those lines, overstates the depreciation existing in these particular lines under consideration here.

The Court: Now, I sustain the objection to that because he answered that question, substantially, just five minutes ago, except you did not use the word, Overstated. You have asked him exactly why it did not apply.

Mr. Coates: I was talking while ago about the reserve accrual and now I am talking about the existing depreciation. It applies both ways; one would be to the existing depreciation in the line, and the other to the reserve accrual, which would be two different things.

. . . . . .

[fol. 632] The Court: He may answer the question.

A. Because that age-life method gives no consideration whatever to those replacements which may be a large portion of the line, and very materially affect the actual condition of the line as a whole on the average.

Q. And do you mean by "affect" an increase in the actual condition of the line as a whole on the average?

A. Increase it very materially over the proportion which the age of the line bears to the average life.

. . . . . .

[fol. 633] H. E. Womack, recalled by the defendant.

Direct examination.

Questions by Mr. Coates:

. . . . . .

Q. Mr. Womack, is there found in each of the operating statements which you have introduced in evidence an item under the account classification "General Expense" termed "Regulatory Commission Expense"?

A. There is.

Q. And have you made a computation and an examination of the accounts of the Company to determine the total amount of Regulatory Commission Expense which has been incurred by the Commission in connection with this investigation down to but not including the expenses of this present trial?

A. Yes; I have.

Q. And, Mr. Womack, is the amount which you have included in your operating statements for Regulatory Commission Expense less than one-tenth of the total amount of Regulatory Commission Expense that has been incurred thus far in connection with this investigation?

A. There is included in the operating expenses for the twelve months of the calendar year 1932, and for the calen-
[fol. 634] dar year 1933, less than one-tenth of the total cost incurred by the company in connection with this Laredo Case in the years 1932 and 1933.

Q. And are the figures which you have included in these operating expenses less than they would have been if the total cost down to, but not including the cost of this trial, had been spread and amortized over a ten-year period?

A. Yes.

* * * * * * *

[fol. 635] J. A. PHILLIPS, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Your name is J. A. Phillips and you are a certified public accountant; is that correct?

A. That is correct.

Q. And how long have you been in the accounting business, Mr. Phillips?

A. For approximately seventeen years.

Q. Have you had a substantial amount of experience with respect to the examination of the books, records, and accounts reflecting the results of operations of public utility companies?

A. I have.

Q. And gas companies?

A. I have.

Q. Mr. Phillips, have you either heard or read the official record of the testimony of the witness Leon O. Lewis in this case?

A. I have heard much of Mr. Lewis' testimony, and I have read the record pertaining to all of Mr. Lewis' testimony except that which I heard this morning.

[fol. 636] Q. Have you familiarized yourself in a general way with the location of the properties which are here in issue?

A. Yes; I have familiarized myself with the general location of these properties.

Q. And have you familiarized yourself with the markets served by the transmission properties which are here in issue?

A. Yes; I have.

Q. And have you examined the records of United Gas Public Service Company sufficiently to familiarize yourself with the way in which that company operates these transmission lines and the way it accounts for the operating expenses and revenues?

A. Well, I have not examined the records in detail; but I have examined their method of distributing expenses and accounting for revenues.

Q. Did you ascertain from that that the Company's method of operation with respect to transmission lines is what is termed "Integrated Operation from Central Operating Points"?

A. Yes.

Q. In your judgment, based on your practical experience as an accountant, Mr. Phillips, would it be practical as an accounting proposition for the Company to attempt to distribute on its books each type of expense to each separate [fol. 637] transmission line and part thereof which it operates?

A. It would not.

* * * * * * *

Q. Mr. Phillips, did you hear or else read the testimony of Mr. Lewis with respect to Voucher J-10-157, wherein Mr. Lewis gave testimony to the effect that such voucher reflects that United Gas Public Service Company when it acquired the properties of South Texas Gas Company had recorded the value of these properties on its books at approximately $934,000.00?

A. Yes; I heard some of Mr. Lewis's testimony in respect to that journal voucher and I read the record in respect to all of his testimony in reference to journal Voucher 10-157.

Q. Have you examined the original of this voucher?

A. I have.

Q. Have you likewise examined the balance sheet of South Texas Gas Company just prior to its merger with United Gas Public Service Company?

A. Yes; I examined the balance sheet of that company showing its condition just prior to the merger.

Q. What conclusion did you reach from the examination of this voucher J-10-157?

A. Well, I reached the conclusion by very casual examination of the coucher that it certainly had to do with proper-
[fol. 638] ties and values not actually recorded on the voucher. First of all, the voucher records the cancellation of capital stock. It sets out a reacquisition of bonds; and it suggests by the nature of the voucher that in merging the assets of the South Texas Gas Company with the assets of the United Gas Public Service Company——

* * * * * * *

The Court: The witness says the voucher suggests such and so to his mind.

* * * * * * *

A. I am testifying, using accounting terminology, that that is what the voucher itself suggests to any accountant; that is my testimony.

* * * * * * *

A. I may repeat, because I don't remember just where I had gotten. But the voucher itself makes reference to the cancellation of capital stock, and to the reacquisition of securities, all of which would make plain to an accountant that there were other assets back of the picture than the particular assets referred to in Mr. Lewis' testimony. It is difficult to understand how otherwise you could bring about the cancellation of the number of shares of stock the voucher discloses.

* * * * * * *

[fol. 639] Q. From your accounting experience, and your knowledge of proper and accepted and approved accounting principles, is it your judgment and your testimony that this voucher reflects the recording by United Gas Public Service Company on its books of the value of the properties of South Texas Gas Company at any such amount as $934,000.00?

A. No; it does not disclose that to me.

Q. On the other hand, does it disclose that the value of those properties were recorded on the books of United Gas Public Service Company at an amount greatly in excess of $934,000.00?

A. An examination of the support to the voucher clearly reflects that there were values most substantially in excess of the item of $934,000.00 plus.

• • • • • • • •

Q. From your examination of that voucher, Mr. Phillips, what value of the South Texas Gas Company's properties does it reflect?

• • • • • • • •

A. The voucher itself does not reflect the value of the properties, or the value at which they were carried on the Company's books.

Q. Does the examination of the voucher, plus the examination of the books, records, and accounts underlying, in support of the voucher, reflect the values?

• • • • • • • •

[fol. 640] A. Yes.

Q. Can you state what those values were which were reflected by the voucher, plus the records, books and accounts of the South Texas Gas Company, involved in that merger?

(Plaintiffs' objection to question sustained; defendant excepts.)

Q. From your examination of this voucher and the books, what value is shown, in your opinion, based on your examination,—is given to the properties and assets of South Texas Gas Company involved in that transaction?

A. In my opinion, the properties and assets are valued as follows: Investments and Capital Stock and Bonds, Loans and Advances, $7,892,061.10.

Mr. Bobbitt: What is that figure?

A. $7,892,061.10. Another asset representing the excess of the investment for South Texas Gas Company in Texas Border Gas Company at the date of the merger, $113,912.70; Book value of plant and property, $2,788,651.24; Cash Receivables, Materials and Supplies, and so forth, $75,884.75; representing the assets, in my opinion, that were merged with the purchasing company, in connection with this voucher.

• • • • • • • •

Q. Give the total figure, Mr. Phillips.

A. $10,870,509.79.

[fol. 641] Q. Reflecting the total assets of the South Texas Gas Company at that time?

A. In my opinion reflecting the total value of the assets of the South Texas Gas Company that were merged with the purchasing company at this time.

* * * * * * *

(Defendant rests.)

End of statement of facts.

[fol. 642] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT TO SUBMIT CASE ON SPECIAL ISSUES AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant, United Gas Public Service Company, in the above entitled and numbered cause, at the conclusion of all the testimony and after the Court has overruled its motion for a peremptory instruction and its motions to suspend the order of the Railroad Commission for the years 1932, and 1933, and without waiving said motions, and after the Court has indicated his intention and purpose to submit the case to the jury, and moves the Court to submit the case to the jury on special issues and not to submit the case to the jury upon a special charge.

(Signature of counsel omitted.)

ORDER

Submitted to opposing counsel and to the Court after the motions above described had been overruled by the Court and submitted and requested prior to the submission of the Charge of the Court to the Jury. The motion is hereby on the 5th day of April, 1934, refused and overruled; because in the opinion of the Court the charge submitted is on Spe-

[fol. 643] cial issue and therefore complies with the request to which action of the Court defendant in open court here now excepts.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 644] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 10—Filed April 5, 1934

Comes now Defendant United Gas Public Service Company at the conclusion of all the evidence herein and after the Court has overruled said Defendant's motion for peremptory instruction, and after the Court has overruled defendant's motions to deny plaintiffs any relief herein on the order of the Railroad Commission of Texas for the years 1932 and 1933, and without waiving said motions, and after the Court has indicated his intention to submit the case to the jury, and now moves the Court to submit to the jury Defendant's Specially Requested Issue No. 10 hereto attached.

(Signature of counsel omitted.)

ORDER

Submitted to opposing counsel and to the Court after the motions above described had been overruled by the Court, and requested prior to the submission of any issue or charge to the jury. The request to submit the attached special issue is hereby on the 5th day of April, A. D. 1934, refused, to which Defendant in open Court here and now [fol. 645] excepts.

C. A. Wheeler, Judge.

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution System property $—.
(2) Transmission system property $—.
(3) Gathering system property $—.

[File endorsement omitted.]

[fol. 646] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 12—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1932 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—.
(2) Transmission system property $—.
(3) Gathering system property $—.

[File endorsement omitted.]

[fol. 647] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 14—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of materials and supplies for the operating properties of United Gas Public Service Company used or useful in transporting, distributing and serving gas to the inhabitants of the City of Laredo? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 648] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 15—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

In answering the following question, you are instructed that by the term "cash working capital or working cash" is meant that amount of free capital reasonably necessary for the efficient and economical transaction of the company's business so as to enable it to pay its current operating expenses when due, take cash discounts, provide for prepaid expenses and maintain a good cash and credit position with its creditors and banking institutions rendering it banking service.

What do you find from the preponderance of the evidence in this case is the fair and reasonable amount of cash working capital or working cash, as the term has been hereinabove defined for you, for the operation of defendant's business of gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo for the year 1933? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 649] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 16—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

In answering the following question, you are instructed that by the term "cash working capital or working cash" is meant that amount of free capital reasonably necessary for the efficient and economical transaction of the company's business so as to enable it to pay its current operating expenses when due, take cash discounts, provide for prepaid expenses and maintain a good cash and credit posi-

tion with its creditors and banking institutions rendering it banking service.

What do you find from the preponderance of the evidence in this case is the fair and reasonable amount of cash working capital or working cash, as the term has been hereinabove defined for you, for the operation of defendant's business of gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo for the year 1932? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 650] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 17—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

By the term "going value" as used in the following question is meant that element of value inhering in an operating property over and above the sum of the values of its component parts, which is attached to it by reason of the fact that it is a going concern, has its business established, and trained operating personnel and is in connected and coordinated operation.

What do you find from the preponderance of the evidence in this case to be the amount of going value inhering in the plant and properties of United Gas Public Service Company employed in gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo in the year 1933?

Answer. $—.

[File endorsement omitted.]

[fol. 651] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 18—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

By the term "going value" as used in the following question is meant that element of value inhering in an operating property over and above the sum of the values of its component parts, which is attached to it by reason of the fact that it is a going concern, has its business established, a trained operating personnel and is in connected and coordinated operation.

What do you find from the preponderance of the evidence in this case to be the amount of going value inhering in the plant and properties of United Gas Public Service Company employed in gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo in the year 1932?

Answer. —.

[File endorsement omitted.]

[fol. 652] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 19—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the average cost per 1,000 cu. ft. to the United Gas Public Service Company in the year 1933 at the well mouth of gas transported, distributed and served to the inhabitants of the City of Laredo, taking into consideration the average price paid to the well owners for such gas plus any additional cost, if any, incurred by the United Gas Public Service Company, in connection with the gas purchased from such well owners?

Answer. —.

[File endorsement omitted.]

[fol. 653] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 24—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

Do you find from the preponderance of the evidence in this case that 3% of $885,000 is a fair and reasonable amount for United Gas Public Service Company to set aside annually in a reserve to provide for depreciation, retirements and replacements?

Answer. —.

[File endorsement omitted.]

[fol. 654] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 25—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of reproduction cost new of the depreciable items distribution system property of the United Gas Public Service Company involved in this case do you find from the preponderance of the evidence in this case should be set aside annually in a reserve to provide for depreciation, retirements and replacements for the year 1933?

Answer. —%.

[File endorsement omitted.]

[fol. 655] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 28—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of reproduction cost new of the depreciable items of the transmission system property used or useful to transport gas to the City of Laredo do you find from the preponderance of the evidence in this case should be set aside annually in a reserve to provide for depreciation, retirements and replacements of such transmission system property?

Answer. —%.

[File endorsement omitted.]

[fol. 656] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 30—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of the reproduction cost new of the depreciable items of gathering system property used and useful to gather the gas transported and served to the inhabitants of the City of Laredo do you find from the preponderance of the evidence in this case is a fair and reasonable percentage to set aside annually in a reserve to provide for depreciation, retirements and replacements of such gathering system property?

Answer. —%.

[File endorsement omitted.]

[fol. 657] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

CHARGE OF THE COURT—Filed April 5, 1934

GENTLEMEN OF THE JURY:

This cause will be submitted to you on a special issue in the form of a question, which you will answer from the evidence introduced before you as hereinafter instructed, and your answer to this special issue will constitute your verdict in this case. You will write your answer to the special issue upon the separate paper handed you herewith, numbered in proper form for your answer. You will select one of your number as foreman, who will preside over your deliberations and who will sign your verdict for you when you have agreed upon it.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, and you will decide the issue submitted according to the evidence: but you must receive the law from the Court, as given in this Charge, and be governed thereby.

As to the rules of law applicable to the issue to be determined by you, and to assist you in answering said special issue, you are instructed as follows:

[fol. 658] 1. By "fair return" is meant that the United Gas Public Service Company is entitled to earn a rate on the present fair value of its property which it employs for the convenience of the public equal to that generally being made at the same time within the same general part of the country upon investments in other business undertakings which are attended by like risks and uncertainties.

The rate of return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise money necessary for the proper discharge of its duties.

2. By "fair value" is meant the reasonable worth of the property at this time that is being used and useful in the public service.

3. By the term "used and useful" is meant that it embraces all that property now actually being used by the United Gas Public Service Company to serve the public and also such property as is reasonably necessary to enable it to perform continuous and efficient service.

4. By "operation expenses" is meant such expenses as are incurred by the United Gas Public Service Company [fol. 659] in the operation of its property in furnishing gas to the people of Laredo, Texas.

5. By "annual depreciation" is meant the amount per annum that is reasonably necessary to compensate for the wearing out and any necessary replacements and retirements of property of the United Gas Public Service Company.

6. By "reproduction cost new" is meant the cost to the owner under the conditions which may reasonably be expected to exist if the property were to be reproduced new.

7. By "going value" is meant the added value of this defendant's plant and property as a whole, used and useful for serving the city of Laredo, over the sum of the values of its component parts which is attached to it by reason of the fact that it is an operating, assembled and established property, functioning with a trained personnel, a co-ordinated plant and property, with customers attached, and its business established.

8. There have been introduced in evidence before you in this case certain findings and conclusions of the Railroad Commission of Texas and also certain transcripts of evidence and exhibits which were before the Railroad Com- [fol. 660] mission at its hearing of the matter now on trial; and you are instructed that as to such findings, conclusions, evidence and exhibits you may consider same for the purpose for which same were admitted in evidence on this trial—that is, for the purpose of assisting you (if same does assist you) in determining whether the order of the Railroad Commission of date June 13, 1933, is unreasonable and unjust to defendant, and for no other purpose.

9. You are instructed that the burden of proof is upon the defendant. United Gas Public Service Company, to show

by clear and satisfactory evidence that the rate promulgated by the Railroad Commission in its said order of June 13, 1933, is unreasonable and unjust as to it.

10. You are further instructed that in determining your answer to said issue in the light of all the evidence introduced in this case the defendant, United Gas Public Service Company, is entitled to receive a fair return at this time on the present fair value of its property that is used and useful in the public service after first deducting all necessary operating expenses and a fair and reasonable amount for the annual depreciation of said property, and that in considering what is a fair value of said property you will take into consideration all elements of value that [fol. 661] have been introduced in evidence before you, including reproduction cost new of said property and the amount of going value (if any) that inheres in said property.

11. By "unreasonable and unjust" is meant that the rate prescribed and adopted in the said order of the Railroad Commission was so low as to have not provided for a fair return upon the fair value of defendant's property used and useful in supplying the service furnished by the United Gas Public Service Company to the inhabitants within the city of Laredo, Texas.

Now, bearing in mind the foregoing definitions and instructions, you will answer the following special issue:

Special Issue No. 1. Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "yes" or "no".

C. A. Wheeler, Judge Fifty-third Judicial District.

[File endorsement omitted.]

[fol. 662] In District Court of Travis County

[Title omitted]

Defendant's Objections and Exceptions to the Court's Charge and Order Overruling Same—Filed April 5, 1934

Defendant excepts and objects to the Court's Charge as a whole and to each and every portion and paragraph thereof because the same is a general charge, contrary to the laws of Texas requiring issues of fact to be submitted to the jury on special issues when requested; and because the same denies to the defendant a full, fair and complete judicial review upon specific findings as to each disputed fact issue in evidence before the jury, and because the submission of such Charge denies to this defendant a full fair and complete hearing and determination of the separate and essential elements entering into the reasonableness and legality of the Commission's order and entering into the effect of the enforcement of such order upon this defendant's rights.

* * * * * * *

II

Because such Charge constitutes an arbitrary and unlawful denial of defendant's right to a judicial determination [fol. 663] of the reasonableness of the Commission's said order and the rate fixed therein upon the independent judgment of the jury as to the facts and upon the independent judgment of the Court as to the law, * * *

*

III

Because such Charge denies to this defendant a determination by the jury of each ultimate issue of fact as to which the evidence is disputed with respect to present fair value, net operating revenues, rate of return, and rate of reverse accrual upon the Federal question raised by the defendant's answer in this case, namely, whether or not the effect of the enforcement of the Commission's said order and the rates prescribed therein take defendant's property and the use thereof without due process of law, contrary to the Four-

teenth Amendment to the Constitution of the United States, and denies to this defendant the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to this defendant the right on this trial to reserve for review the determination of such ultimate fact issues separately, and prevents the defendant from reserving for review by the appellate courts [fol. 664] the legality of the separate determinations of such ultimate fact issues as fair value, net operating revenues, rate of return, and rate of reserve accrual, and prevents this defendant from reserving for review the erroneous application of correct principles of rate-making law to the facts found, and prevents this defendant from knowing and reserving for review by the appellate courts whether there have entered into the answer to the single question propounded by the Court to the jury findings made without evidence to support them, findings made contrary to the evidence in the case, findings made upon mixed questions of law and fact, and findings made upon the attempted application by the jury of inadmissible evidence admitted in evidence in the record here over the objection of this defendant.

* * * * * * *

IV

Because such Charge is based upon the erroneous assumption that this action is an appeal under the Texas Statutes and particularly Article 6059 of the Revised Civil Statutes of Texas, 1925, and ignores and excludes from the jury the determination of the Federal questions pleaded and urged by defendant in this case, namely, denial of due process by confiscation of defendant's property from the [fol. 665] effect of the Commission's said order and the rate fixed therein, and denial of the equal protection of the laws by the enforcement of the Commission's said order and the rate fixed therein.

* * * * * * *

XI

Defendant objects and excepts to paragraph 9 of the Court's Charge, being the Court's instruction upon the burden of proof, in so far as such objection is made applicable to the determination by the jury in this case of the Federal

questions involved, namely, the taking of its property without due process and the denial of equal protection under the Fourteenth Amendment to the Constitution of the United States, as such Federal questions have been above defined, because such instruction upon the burden of proof denies to this defendant a determination of the issues of fact in this case by the jury upon its own independent judgment as to the facts shown by the preponderance of the evidence, and because the same places an undue burden upon this defendant, in that the defenses pleaded and set up by the defendant here are not only that the order of the Railroad Commission and the fifty-five cent rate prescribed in said order were each illegally and unlawfully made and denied this defendant a [fol. 666] full and fair hearing and all rights incident thereto, but that said order is unjust and unreasonable and unlawful because made without evidence to support it and upon findings made contrary to the evidence and the record before the Commission and because made by methods contrary to principles of law and equity; the defendant has also pleaded and set up as its defense to this suit to enforce the Commission's said order and said fifty-five cent rate and to impose the same upon this defendant from January 1, 1932, and for the future, that the effect of said order is to take defendant's property and the use thereof without due process of law and to deny this defendant the equal protection of the laws, and because the effect of such order as disclosed by the undisputed testimony in the record in this case is to deny this defendant its rights under the Fourteenth Amendment to the Constitution of the United States as above described, and because such instruction permits the jury to answer Special Issue No. 1 "No" regardless of the effect of the Commission's said order and said fifty-five cent rate from and after January 1, 1932, down to the present date, and imposes upon this defendant too great a burden in each and all of the above respects; * * * and denies to this defendant a full and fair hearing and a record of a full and fair hearing which permits this defendant to adequately and [fol. 667] properly reserve for review by the appellate courts the ultimate issues of fact entering into the jury's determination of special issue No. 1.

Defendant further objects and excepts to said instruction upon the burden of proof because the same indicates

and points out to the jury the effect of their answer to Special Issue No. 1 and defeats the fundamental purpose of submitting the case on special issues, which is to enable the jury to return a verdict on fact issues without being aware of the legal effect of their answers.

• • • • • • •

XIII

Defendant objects and excepts to Special Issue No. 1 for each and all of the following reasons:

• • • • • • •

(f) Because said issue is multifarious and duplicitous and submits more than one question of fact to the jury in one issue, in that it submits the question of fair value of the property used and useful in serving Laredo, fair rate of return, rate of depreciation, the effect of the rate on the future business and the question of revenues and expenses, in one question.

[fol. 668] (g) Because said issue submits a question of law to the jury, the question of the reasonableness and justness of the order of the Commission being a question of law after a determination of the facts as to fair value, rate of return, rate of reserve accrual, and revenues and expenses for a proper test period.

• • • • • • •

XVI

Defendant objects and excepts to the Court's Charge and each and every part and portion thereof, because the same fails to submit to the jury the ultimate issues of fact reflected by the evidence in the case, and because it submits to the jury a question of law to be determined by the Court and not proper for determination by a fact-finding body, such as the jury in this case, namely, the question as to whether or not such order of June 13, 1933, and the fifty-five cent rate are just and reasonable, the justness and reasonableness of such order being a question of law to be determined by the Court on the basis of the ultimate issues of fact as to value, net operating revenues, reasonable

annual rate of return, and reasonable annual rate of reserve accrual, as found by the jury.

* * * * * * *

[fol. 669] ORDER

The above and foregoing objections and exceptions having been made and reduced to writing within a reasonable time after the Court's Charge was presented to counsel for defendant, United Gas Public Service Company, and before said Charge was read to the jury, and having been presented to and considered by the Court before said Charge was read to the jury, each and all of such objections and exceptions were by the Court overruled, to which action of the Court defendant then and there in open court excepted, and said objections and exceptions are ordered filed as a part of the record in this case.

April 5th, 1934.

C. A. Wheeler, Judge Fifty-third Judicial District.

[File endorsement omitted.]

[fol. 670] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

VERDICT—Filed April 10, 1934

We, the jury, answer the issues submitted to us in this case as follows:

Answer to Special Issue No. 1. No.

Fred W. Sassman, Foreman.

[File endorsement omitted.]

[fol. 671] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

Comes now the defendant United Gas Public Service Company, and, after the verdict of the jury has been re-

ceived and filed by the Court, files this, its motion for judgment non obstante verdicto, and in support thereof respectfully represents to the Court:

* * * * * * *

II

That it is and would be proper for the Court to disregard the verdict of the jury and the answer of the jury to the special issue No. 1, which is the only issue submitted to the jury, and to render a judgment non obstante verdicto herein for the further reason that the said answer of the jury to said issue in the negative has no support in the evidence.

The evidence most favorable herein to the plaintiffs shows the order of the Railroad Commission to be unjust and unreasonable and also confiscatory, and by considering only the lowest valuation made of defendant's prop- [fol. 672] erty used and useful in serving the City of Laredo testified to and in evidence in this case, and by considering only the lowest reasonable rate of return testified to and in evidence herein, and by considering only the lowest amount for annual depreciation testified to and in evidence in this case, and by considering only the lowest amount of gross revenues and operating expenses testified to and in evidence herein for the period of the Railroad Commission's order from January 1, 1932, down to date, and for the only proper and legal period which can be considered the order of the Commission is shown to be unjust and unreasonable, and is shown to be confiscatory.

Wherefore, premises considered, defendant United Gas Public Service Company, prays that this, its motion for judgment non obstante verdicto be granted and that a judgment be entered for the United Gas Public Service Company and against all of the plaintiffs herein decreeing that the relief herein prayed for by the plaintiffs for the enforcement of the order of the Railroad Commission be denied, and that the defendant United Gas Public Service Company recover all of its costs in this behalf expended.

(Signature of counsel omitted.)

[File endorsement omitted.]

[fol. 673] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

* * * * * * *

It is, Therefore, Ordered, Adjudged and Decreed by the Court that the motion of the defendant United Gas Public Service Company for judgment non obstante verdicto be and the same is hereby in all things overruled.

C. A. Wheeler, Judge.

(Notation of entry of order in the Court's Minutes omitted.)

[fol. 674] IN DISTRICT COURT OF TRAVIS COUNTY

52,774

THE STATE OF TEXAS et al.

VS.

UNITED GAS PUBLIC SERVICE COMPANY

JUDGMENT—April 24, 1934

On the 7th day of March, A. D. 1934, came on to be heard the above styled and numbered cause, wherein the State of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacity as members of and composing the Railroad Commission of Texas, Miriam A. Ferguson, in her official capacity as Governor of the State of Texas, James V. Allred, in his official capacity as Attorney General of the State of Texas, the City of Laredo, a municipal corporation, Albert Martin, in his official capacity as mayor of the City of Laredo, Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, and B. Salinas, in their official capacity as members of and composing the City Council and governing body of the City of Laredo, and M. J. Raymond, in his official capacity as City Attorney of the City of Laredo, are plaintiffs, and the United Gas Public

Service Company, a corporation, is defendant, and came the said parties herein and announced ready for trial, and [fol. 675] came a jury of good and lawful men, to-wit: Fred S. Sasman and eleven others, who being duly impaneled and sworn and having heard the pleadings, the evidence and the argument of counsel from day to day, did on the 6th day of April, A. D. 1934, retire to consider of their verdict in response to the following special issue and legal explanations and definitions in connecton therewith submitted to them by the court:

(Charge of the Court set out on pp. 657-661 of this Transcript of record was here repeated verbatim).

And in answer to said special issue as submitted to them by the court, said jury duly returned in to open court on April 10, 1934, the following verdict, to-wit:

(Verdict of the Jury set out on p. 670 of this Transcript of record was here repeated verbatim.)

Whereupon, said jury having been individually polled at the request of the defendant and each juror having stated in open court in answer to the clerk's query that such was his verdict, the same was by the court duly received and ordered filed, and the jury discharged;

[fol. 676] It is, Therefore, Ordered, Adjudged and Decreed by the Court that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a Fifty-five (55¢) cent gas rate to domestic consumers within the City of Laredo, Texas, be, and the same is hereby in all things sustained as a valid and subsisting order, except as hereinafter provided;

And it appearing to the Court that the provision contained in said order of the Railroad Commission of Texas, reading:

"It is further ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the City of Laredo, for the benefit of the domestic consumers, the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order",

is distinct and separable from the preceding and the remaining portions of the said order; and the Court being

of the opinion that so much of the said order of the Railroad Commission of Texas bearing date of June 13, 1933, as provides for making its rate effective Jan. 1st, 1932 and for a refund to the domestic or residential consumers of the City [fol. 677] of Laredo, Texas, for the difference between the amount of the fifty-five cent rate prescribed by said order and the existing seventy-five cent rate now being charged and collected by said defendant United Gas Public Service Company, is invalid,

It is Therefore, Ordered, Adjudged and Decreed by the court that to this extent said order be not sustained and of no force and effect; without prejudice, however, to the rights of the City of Laredo, Texas, to recover the difference between the fifty-five cent rate promulgated in said order of the Railroad Commission bearing date of June 13, 1933, and the existing seventy-five cent rate now being charged and collected by the defendant, United Gas Public Service Company, for the use and benefit of its citizens and/or the rights of such domestic and residential consumers of gas within said City of Laredo, Texas, to recover the said difference in rates, should this provision of said order as herein declared invalid be subsequently held to be valid and sustained, upon the final determination of this cause on any appeal hereof.

It is Further Ordered, Adjudged and Decreed by the Court that the defendant, United Gas Public Service Company, a corporation, be and it is hereby permanently and [fol. 678] perpetually enjoined and restrained from charging or collecting any rate, rates or charges for natural gas or natural gas service to domestic or residential consumers within the City of Laredo, Texas, in excess of the Fifty-five (55¢) cent rate prescribed and promulgated by the Railroad Commission of Texas in its order of June 13, 1933, aforesaid, unless subsequently changed or modified by an order of the said Railroad Commission of Texas or other duly constituted authorities; and, further, that the stay order entered by this court in this cause on the 26th day of July, A. D. 1933, be and the same is hereby dissolved and declared of no further force and effect; provided, however, that in the event of an appeal from this decree, if timely perfected, and the judgment herein is superseded by the filing of a supersedeas bond in the sum of Thirty Thousand Dollars ($30,000.00) by the defendant, and if the said appeal is prosecuted according to law by the said defendant, this

judgment and the permanent injunction herein granted shall be stayed during the period that the said appeal is pending and until the said appeal shall have been either abandoned or finally determined by a court of competent jurisdiction and of last resort.

[fol. 679] It is Further Ordered, Adjudged and Decreed by the Court that plaintiffs herein, The State of Texas et al., do have and recover of and from the defendant, United Gas Public Service Company, a corporation, all costs in this behalf expended; for all of which let execution issue;

to all of which action of the Court in sustaining said order of the Railroad Commission in part and any relief granted against it, the defendant, United Gas Public Service Company duly excepted; and to such action of the Court declaring said order invalid in part, and denying recovery for any refund as contended for by plaintiffs and in not rendering judgment in their behalf for the difference between the fifty-five cent rate promulgated in the order of said Railroad Commission and the existing rate now being charged and collected by said defendant, either from the date of January 1, 1932, or any other date subsequent to January 1, 1932, plaintiffs duly excepted.

C. A. Wheeler, Judge, Fifty-third Judicial District Court, Travis County, Texas.

(Notation of entry of judgment in the Court's Minutes omitted.)

[fol. 680] In District Court of Travis County

[Title omitted]

Defendant's Amended Motion for New Trial—Filed April 24, 1934

To the Honorable Judge of Said Court:

Comes now the defendant United Gas Public Service Company in the above-entitled and numbered cause and with leave of Court first had and obtained files this its Amended Motion for New Trial in lieu of its original motion for new trial heretofore filed herein on April 12, 1934, and moves the Court to set aside the verdict of the jury and

moves the Court to grant it a new trial herein and for cause says:

* * * * * * *

2

The Court erred in overruling the defendant's motion for peremptory instruction duly and properly submitted to the Court at the conclusion of all the evidence and prior to the submission of the case to the jury for the reason that considering the lowest valuation placed upon the defendant's property used and useful in serving the City of Laredo, and considering the lowest rate of return of 7% testified to and [fol. 681] in evidence, and considering only the lowest rate of annual depreciation testified to and in evidence, and considering the lowest revenues and operating expenses testified to and in evidence for the period January 1, 1932, the effective date of the Railroad Commission's rate-reduction order to December 31, 1933, the order of the Railroad Commission was clearly and satisfactorily shown to be unjust and unreasonable and the rates prescribed therein were shown to result in confiscation of defendant's property.

3

The Court erred in overruling the defendant's motion for peremptory instruction duly and properly submitted to the Court at the conclusion of all of the evidence and prior to the submission of any issue to the jury, for the reason that the opinion and order of the Railroad Commission on its face was shown to be so arbitrary and to be the result of the use of such arbitrary methods by the Railroad Commission, namely, the computation of revenues over the four-year period beginning June 30, 1928 through July 31, 1932, and the averaging of such revenues over such period as a basis for fixing rates, as to constitute a denial of due process and to result in depriving the defendant of its property without due process of law.

* * * * * * *

[fol. 682]

9

The Court erred in overruling defendant's motion for judgment non obstante verdicto duly and properly submitted to the Court for the reason that it would have been

proper for the Court to have directed a verdict in this case for the defendant and it would have been proper for the court to disregard the verdict of the jury and the answer of the jury to Special Issue No. 1, in that the answer of the jury to said issue had no support in the evidence, and in that by considering the evidence most favorable to the plaintiffs in this case, the order of the Railroad Commission is shown to have been unjust and unreasonable and also confiscatory, in consequence whereof the defendant was entitled to a judgment non obstante verdicto under and by virtue of Article 2211, as amended by the 42nd Legislature of the State of Texas.

* * * * * * *

13

The Court erred in overruling defendant's demurrer and exception to plaintiffs' petition, said demurrer and exception being contained in Defendant's First Amended Original Answer, paragraph A, subnumber 2, (a), which de- [fol. 683] murrer was duly and properly submitted to the Court.

* * * * * * *

15

The Court erred in overruling defendant's demurrer and exception to plaintiffs' petition, said demurrer and exception being contained in Defendant's First Amended Original Answer, paragraph A, subnumber 2, (c), which demurrer was duly and properly submitted to the Court.

* * * * * * *

26

The Court erred in his charge to the jury and in submitting the one question as to whether the order of the Railroad Commission was unjust and unreasonable over defendant's objection duly and timely made that such method of submission denied to the defendant a full, fair, and complete judicial review upon specific findings as to each disputed fact issue and evidence before the jury and denied to the defendant a full, fair, and complete hearing and determination of the separate and essential elements entering into the reasonableness and legality of the Commission's order and

entering into the effect of the enforcement of such order upon defendant's rights and combined in one question [fol. 684] the fundamental elements of net operating revenues, consisting of the difference between operating revenues and operating expenses, as well as the fundamental element of a reasonable rate of net annual return on the fair value of the defendant's property used and useful to furnish the service at the time the same is being furnished and used to furnish the service, as well as the proper annual rate of reserve accrual upon the depreciable items of defendant's said property necessary to preserve the integrity of the investment in and the value of such property and make good capital losses accruing from physical deterioration and cor-osion and all other causes of property retirement.

* * * * * * *

28

The Court erred in his charge to the jury submitted and made to the jury over defendant's objection duly and timely made that the said charge constituted an arbitrary and unlawful denial of defendant's right to a judicial determination of the reasonableness of the Commission's said order and the rates fixed therein upon the independent judgment of the jury as to the facts and upon the independent judgment of the Court as to the law and denied to the defendant a determination by the jury of each ultimate issue of fact as [fol. 685] to which the evidence is disputed with respect to present fair value, net operating revenues, rate of return, and rate of reserve accrual upon the federal question raised by the defendant's answer in this case, i. e., whether or not the effect of the enforcement of the Commission's order and the rates prescribed therein would take defendant's property and the use thereof without due process of law and deny to defendant the equal protection of the laws contrary to the Constitution of the United States, and because such charge denied to this defendant the right on this trial to reserve for review the determination of such ultimate fact issues separately and prevented the defendant from reserving for review by the appellate court the legality of the separate determinations of such ultimate fact issues and prevented this defendant from reserving for review the erroneous application of correct principles of rate making law to the facts found and from knowing and reserving for review by

the appellate court whether there had entered into the answer of the jury to the single question propounded to them findings made without evidence to support them, findings made contrary to the evidence, findings made upon mixed questions of law and fact and findings made upon the at-
[fol. 686] tempted application by the jury of inadmissible evidence admitted in evidence in the record year over the objection of the defendant.

* * * * * * *

50

The court erred in overruling defendant's objection to Special Issue No. 1, and in submitting said issue to the jury over defendant's objection duly and timely made, for the reason that it submitted in one question or issue the question of whether the order is unjust and unreasonable and permitted the jury to answer said Special Issue No. 1 "No" solely upon a finding with respect to whether or not the order is unjust and unreasonable without requiring the jury to find the facts upon which the Court might determine that the effect of the order of January 1, 1932, was and is to deny the defendant a reasonable net annual rate of return from such date, and prevented defendant from securing a determination of whether or not the effect of the order is to take the defendant's property without just compensation and deny defendant due process of law and equal protection of the law.

51

The Court erred in submitting to the jury Special Issue No. 1 over defendant's objection duly and timely made that the said issue is multifarious and duplicitous and submits
[fol. 687] the question whether the order is unjust and whether the order is unreasonable and submits the question of (1) fair value of the property used and useful in serving Laredo, (2) fair rate of return, (3) rate of depreciation, (4) question of revenues and expenses and net return, (5) the effect of the rate on future business, answer to each of which separate questions is necessary to an ultimate answer to said issue.

52

The Court erred in overruling defendant's objection to Special Issue No. 1 and in submitting said issue to the

jury over defendant's objection duly and timely made, for the reason that said issue submitted a question of law to the jury, the question of the reasonableness and justness of the order of the Commission being a question of law for the Court after a determination of the facts as to fair value, rate of return, rate of reserve accrual, and revenues and expenses for a proper test period.

* * * * * * *

59

The Court erred in overruling defendant's objection to the Court's charge and in submitting said charge to the jury over defendant's objection duly and timely made, for [fol. 688] the reason that under the charge as given the jury might find a lower amount for fair value than is supported by the evidence in the record; might find a lower rate for return, or for reserve accruals, or for operating expenses, than is supported by evidence in the records, and defendant would thereby be prevented from reserving for review on appeal such unlawful determination, and the charge as given therefore deprives defendant of its right to a full and fair hearing and trial in such a manner that it can know and reserve all points for review in the appellate court, and can preserve all points for review upon the federal questions involved by the Supreme Court of the United States.

* * * * * * *

73

The Court erred in refusing and failing to submit to the jury upon request of defendant duly and timely made, defendant's Specially Requested Issue No. 10, reading as follows:

"What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transport-[fol. 689] ing, distributing nd serving natural gas to the inhabitants of the City of Laredo? In answering this ques-

tion, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—.
(2) Transmission system property $—.
(3) Gathering system property $—."

• • • • • • •

78

The Court erred in refusing and failing to submit to the jury upon request of defendant duly and timely made, defendant's specially requested issue No. 12, reading as follows:

"What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1932 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—;
[fol. 690] (2) Transmission system property $—;
(3) Gathering system property $—.

• • • • • • •

82-114

(Of this series of paragraphs, the paragraphs first designated below each commence as follows:

"The Court erred in refusing and failing to submit to the jury upon request by defendant duly and timely made, defendant's Specially Requested Issue No. (here the number of the issue is shown), reading as follows:"

Then there is copied in each of the following numbered paragraphs of this motion the special issue numbered as set out below, which special issues have already been included once in this transcript.

Paragraph of Motion	Number of Special Issue	Page of Transcript Where the Issue Appears
82	14	...
84	15	...
86	16	...
88	17	...
90	18	...
92	19	...
101	24	...
103	25	...
109	28	...
113	30	...

[fol. 691] The next paragraph following each such paragraph assigns error in the failure of the Court to submit to the jury for its determination the question of fact pointed out to the Court in the issue quoted in the paragraph next preceding. Certificate in this manner, rather than a complete copy of each such paragraph, was made at the request of counsel for appellant.)

• • • • • • •

227

The Court erred in rendering judgment in favor of the plaintiffs and against the defendant in that under the testimony most favorable to the plaintiffs herein and considering only the lowest valuation, lowest rate of return, lowest rate of depreciation, lowest amount of operating expenses, lowest amount of revenues for the years 1932 and 1933, the rate fixed by the Railroad Commission is shown to be confiscatory of the defendant's property and to be unjust and unreasonable to it.

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234

The Court erred in rendering judgment herein permanently and perpetually enjoining and restraining the Defendant from charging or collecting any rates for natural gas and natural gas service to domestic or residential con-
[fol. 692] sumers in Laredo in excess of the fifty-five cent ($.55) rate prescribed and promulgated by the Railroad

Commission, for the reason that, considering only the testimony most favorable to the Plaintiffs and considering the lowest valuation placed on Defendant's property used and useful in serving Laredo, and the lowest rate of return of 7% testified to and in evidence, and the lowest rate of annual depreciation testified to and in evidence, and the lowest revenues and operating expenses testified to and in evidence for the period January 1st, 1932, the effective date of the Railroad Commission's order, to December 31st, 1933, the Order of the Commission was clearly shown to be unjust and unreasonable and the rates prescribed therein were shown to result and will result in confiscation of Defendant's property.

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The Court erred in rendering judgment sustaining any part of the Order of the Railroad Commission in that the Order and Opinion of the Commission on its face shows that the Commission used such arbitrary methods in reaching its conclusions and in the use of revenues and operating statements for periods of time which form no basis or criterion for the fixing of rates as of the time of the hearing and as of the time of the entry of the Commission's [fol. 693] Order, that it deprives Defendant of its property without due process of law and denies Defendant equal protection of the law, and in that considering only the testimony most favorable to the Plaintiffs, that is the lowest valuations, the lowest rate of return, the lowest rate of depreciation and the lowest revenues and operating expenses for a proper test period, the Order of the Commission is shown by clear and satisfactory evidence to be unjust and unreasonable and confiscatory of Defendant's property.

Wherefore, premises considered, defendant respectfully moves the Court for each and all of the above and foregoing reasons and errors pointed out to the Court that the verdict of the jury be set aside and that the judgment of the Court be set aside and that this defendant be granted a new trial herein.

(Signature of counsel omitted.)

[File endorsement omitted.]

[fol. 694] In District Court of Travis County

[Title omitted]

Order Overruling Defendant's Amended Motion for New Trial—Filed April 24, 1934

It is, Therefore, Ordered, Adjudged, and Decreed by the Court that the Amended Motion for New Trial of the defendant United Gas Public Service Company be and the same is hereby in all things overruled, to which action of the Court defendant then and there in open court excepted.

At the same time and on the 24th day of April, 1934, the defendant United Gas Public Service Company in open Court then and there gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

C. A. Wheeler, Judge.

[fol. 695] In Court of Civil Appeals for the Third Supreme Judicial District of Texas

No. 8176

United Gas Public Service Company, Appellant,

v.

State of Texas et al., Appellees

Appeal from the 53rd District Court, Travis County, in No. 52774

Docket Entries

(Certain docket entries omitted)

6-21-34. Transcript and statement of facts received and filed.
3-14-35. Submitted and argued.
10-30-35. Judgment below reformed and affirmed.
11-14-35. Appellant's motion for rehearing received and filed.
1- 8-36. Appellant's motion for rehearing submitted and overruled.

DOCKET ENTRIES—Continued

2- 7-36. Petition for writ of error received and filed.
2- 8-36. Record, all papers and certified copies (of judgment and orders) sent to the Supreme Court of Texas.
10- 7-36. Writ of error refused.

[fol. 696]

12-30-36. Motion for rehearing overruled and record returned by the Supreme Court.
1 -7-37. Order of Chief Justice, C. C. A. denying petition for appeal to U. S. Supreme Court.
1-20-37. Petition for appeal to U. S. Sup. Ct., statement as to jurisdiction, citation, order allowing appeal, notice and acknowledgment of service on 1-19-37 by Asst. Attorney Gen'l. received and filed.
1-22-37. Cost bond filed, acknowledgment of service on 1-19-37 by E. H. Lange, Laredo, received and filed.
2- 1-37. Appellant's præcipe for transcript received and filed.
2- 1-37. Appellees' acknowledgment of service of præcipes to clerks C. C. A. and Sup. Ct. of Texas received and filed.
2- 4-37. Notice received from appellant's counsel that appellees' time for filing motion to dismiss or affirm had expired.
3- 2-37. Appellees' counter præcipe for transcript and acknowledgment of service thereof received and filed

[fol. 697]

3- 5-37. Transcript of record certified and delivered to counsel for appellant.

[fol. 698] IN COURT OF CIVIL APPEALS, THIRD JUDICIAL DISTRICT

No. 8176

[Title omitted]

APPELLANT'S ASSIGNMENTS OF ERROR—In Brief Filed November 22, 1934

No. 1

The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission.

No. 2

The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for [fol. 699] appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made.

No. 3

The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel

appellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny appellant the equal protection of the laws and deprive appellant of its property without [fol. 700] due process of law and without due course of the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory.

No. 4

The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission.

No. 5

The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its [fol. 701] said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made.

No. 6

The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo, from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of ap-

pellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable, and confiscatory.

[fol. 702]

No. 7

The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial.

No. 8

The court erred in entering judgment upon the verdict of the jury herein, because the verdict of the jury could not control the court in applying the law to the facts and declaring the result, and because the evidence in the record most favorable to appellees showed, as a matter of law, that at the date of the trial and since January 1, 1932, the existing $0.75 rate in Laredo did not yield a reasonable return on fair value, and hence there was no evidence to support the verdict and the judgment of the court based thereon.

[fol. 703]

No. 9

The court erred in entering its judgment dated April 24, 1934, decreeing that the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City was beyond the judicial power of the Court.

No. 10

The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the [fol. 704] erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court.

No. 11

The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues.

No. 12

Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

"Special Issue No. 1: Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts [fol. 705] introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question 'yes' or 'no'." (Tr. p. 206.)

because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes.

No. 13

The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that

such charge, and particularly Special Issue No. 1 thereof, was multifarious.

No. 14

The court erred in giving the charge to the jury and in overruling appellant's objection thereto made upon the ground that Special Issue No. 1 thereof submitted to the jury a question of law for determination.

* * * * * * *

No. 18

The court erred in submitting the case to the jury upon the charge given, over appellant's objection thereto seasonably made, upon the ground that submission in this manner denied appellant a trial in accordance with due process of [fol. 706] law upon appellant's defenses of confiscation under the Federal Constitution.

No. 19

The Court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal questions as to the existence and sufficiency of evidence to support the verdict and judgment.

No. 20

The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a n n-delegable duty of the court, and such verdict and judgment are, therefore, void.

* * * * * * *

[fol. 707] No. 29

The court erred in failing and refusing to submit to the jury, when seasonably requested by appellant, appellant's specially requested issue No. 10 (Tr. p. 134), asking the jury to answer what was the fair value of the physical operating properties of appellant used and useful to serve Laredo in 1933, and in refusing to give, in connection therewith, the definition contained in appellant's specially requested issue No. 9. (Tr. p. 132.)

No. 30

The court erred in refusing to submit to the jury the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 9 and 10.

No. 31

The court erred in refusing to submit to the jury appellant's specially requested issue No. 12 (Tr. p. 138), asking the jury to state what was the fair value of appellant's physical operating properties used and useful in 1932 to serve the City of Laredo.

No. 32

The court erred in refusing to submit to the jury the question of fact suggested and pointed out to the court in [fol. 708] appellant's specially requested issue No. 12.

No. 33

The court erred in failing and refusing to submit to the jury the appellant's specially requested issues Nos. 14, 15, 16 and 17 (Tr. pp. 142, 144, 146, 148), asking the jury to determine reasonable amounts for materials and supplies, cash working capital and going value for appellant's said physical operating properties during the year 1933.

No. 34

The court erred in refusing and failing to submit the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 14, 15, 16 and 17.

No. 35

The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 19 (Tr. p. 152), asking the jury to determine the reasonable cost to appellant of the gas at well mouth which appellant served to Laredo.

No. 36

The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out to the [fol. 709] court in appellant's specially requested issue No. 19.

* * * * * * *

No. 41

The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 24, and appellants' specially requested issue No. 23, requested in connection therewith (Tr. pp. 160, 162), defining annual depreciation rate, and requesting the jury to answer whether 3 per cent of $885,000 was a fair and reasonable annual depreciation rate for appellant's said depreciable property.

No. 42

The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out in appellant's specially requested issue No. 24, and a proper definition of annual depreciation rates.

No. 43

The court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 25 and 26 (Tr. pp. 164, 166), asking the jury to answer what percentage of reproduction cost new of depreciable items of [fol. 710] distribution system property should be set aside as an annual reserve accrual in 1932 and 1933.

No. 44

The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in appellant's specially requested issues Nos. 25 and 26.

* * * * * * *

No. 47

Similarly, the court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 28, 29, 30 and 31 (Tr. pp. 170, 172, 174, 176), requesting the jury to determine the percentages of reproduction cost new of the depreciable items of the transmission and gathering system properties required to constitute a reasonable annual reserve accrual and the reproduction cost new of depreciable items of said transmission system and gathering system properties.

No. 48

The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in [fol. 711] appellant's specially requested issues Nos. 28, 29, 30 and 31.

[File endorsement omitted.]

[fol. 712] In Court of Civil Appeals of Texas

No. 8176

United Gas Public Service Company, Appellant,

vs.

The State of Texas et al., Appellees

Appeal from District Court of Travis County

Opinion—Filed October 30, 1935

In February, 1909, the City of Laredo granted certain individuals a 25-year franchise to construct and operate a natural gas distribution system in said city. The franchise and all rights thereunder were acquired by appellant through the mesne conveyances of several predecessors. The ordinance and some of the orders and proceedings here involved occurred before appellant acquired the franchise; but it is bound by them, and will be considered as having owned and operated the franchise at all times.

From the year 1921 to December, 1931, the natural gas rate for domestic use in Laredo was 75¢ per M. C. F., with

10% discount if bill was paid within 10 days from date, and with a minimum monthly bill of $1.00 per customer. On December 15, 1931, the City of Laredo, a Home Rule chartered city, acting under the authority given by Art. [fol. 713] 1175, R. S. 1925, by ordinance fixed the natural gas rate for domestic use at 40¢ per M. C. F., with 10% discount if bill was paid in 10 days, and with a minimum monthly bill of $1.00 per customer, the ordinance providing that the rate would be effective from January 1, 1932. An appeal under Art. 6058, R. S. 1925, was perfected from the ordinance to the Railroad Commission. Appellant filed a bond in the sum of $20,000.00, conditioned that it would refund any excess rates over the rates finally determined to be fair and reasonable. Pending said appeal appellant filed an application for an increase of the 75¢ domestic rate, which was not acted upon by the City of Laredo because of the pendency of the matter before the Commission; and thereafter appellant perfected an appeal, based on this application, to the Commission, filing a bond conditioned as the one in the first appeal. The Commission consolidated the two appeals, heard them on their merits, and on June 13, 1933, promulgated its order fixing the natural gas rate for domestic use at 55¢ per M. C. F., with minimum monthly bill of $1.00 per customer. The order provided for a 10% penalty if bill was not paid within 10 days from date; provided that the 55¢ rate would be effective from January 1, 1932; and further provided that appellant refund to the [fol. 714] customers the difference in the amount collected after January 1, 1932, under the 75¢ rate and the 55¢ rate, appellant having continuously collected the 75¢ rate.

On June 29, 1933, appellant filed its bill in equity in the Federal District Court, naming the members of the Railroad Commission, the Governor, the Attorney General, and the City of Laredo and its governing officials as defendants, seeking to restrain them from enforcing the 55¢ rate pending a hearing of the matter by a statutory federal court of three judges; alleging that because the 55¢ rate would not afford appellant a reasonable return on the fair value of its property used in the public service, the rate order was confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of the Federal Constitution.

On July 26, 1933, appellees, the parties named as de-defendants in appellant's suit in the Federal Court, filed

this suit in the District Court of Travis County, alleging that appellant had filed its aforementioned bill in equity in the Federal Court, and that appellees brought this suit in the nature of an appeal under the terms of Art. 6059, R. S. 1925; but that "such appeal is not taken because plaintiffs [fol. 715] (appellees) are dissatisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of the court and its venue to hear and finally determine the matters in controversy, and to enforce the said order, if it should be deemed to be valid upon final hearing," which order appellant was alleged to have continuously violated since its promulgation; and prayer was that appellant be enjoined from charging or collecting any rates for natural gas in excess of the 55¢ rate fixed by the Commission, and that the City of Laredo recover for the consumers the difference in the amount collected under the 75¢ rate and the 55¢ rate. Appellees also requested that pending the final determination of the cause, an order be entered staying all proceedings by the Commission or City of Laredo in the collection of the 55¢ rate; which order was entered by the State District Court on the date the petition was filed.

On August 1, 1923, appellant and appellees appeared before the statutory three-judge Federal Court, and appellees' motion to stay all proceedings in that cause until final disposition of the Travis County District Court cause was granted; the statutory Federal Court also enjoined the [fol. 716] enforcement of the 55¢ rate, "pending the final disposition of the cause" in the State District Court. On the date of this stay order by the three-judge court, appellant filed its petition in the Federal District Court, praying for the removal of the cause from the State to the Federal Court. Appellees answered with a motion to remand the cause to the State Court; which motion was granted.

In the State Court appellant filed an answer, attacking the 55¢ rate, alleging that the rate order was based on assumption contrary to the facts with regard to the average annual revenues of appellant, and was therefore not supported by any evidence; and that because the 55¢ rate did not yield a net return of 7% per annum from January 1, 1932, down to the date of the trial (in April, 1934), and would not yield a reasonable return on the fair value of the property used in the public service, the rate order was

therefore unjust and unreasonable and confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of both the State and Federal Constitutions; and prayer was that the appellees be restrained from enforcing the alleged void order.

Under the pleadings and proceedings, the suit filed by [fol. 717] appellees in the District Court of Travis County was merely one to bring appellant within the jurisdiction of the State Court as provided for by Sec. 266 of the Judicial Code of the United States (28 U. S. C. A., Secs. 368 et seq.), in order to determine the validity of the 55¢ rate; and the amended answer of appellant therein, seeking to enjoin the enforcement of the 55¢ rate, was in effect an appeal by it under Art. 6059, to determine whether the rate order was unjust and unreasonable as to appellant; and to determine the additional question of whether the enforcement of the rate would result in confiscation of appellant's property used in the public service, rendering the rate order unconstitutional. Upon the issues thus joined in the State Court a trial was had to a jury. The court's charge consisted of definitions and instructions, and the following special issue:

"Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a $0.55 gas rate to residential consumers within the City of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust to defendant United Gas Public Service Company? Answer this question 'Yes' or 'No'."

The jury answered the issue "No". Accordingly, the judgment enjoined appellant from charging rates in Laredo in excess of the 55¢ rate fixed by the Commission, until [fol. 718] changed by the Commission or other authorized authority; dissolved the stay order of June 26, 1933; and provided for a suspension of the judgment upon the perfecting of an appeal and the filing of a supersedeas bond in the sum of $30,000. The judgment declared the Commission's order fixing the 55¢ rate to be valid, except that portion making the 55¢ rate effective from January 1, 1932, and for a refund of the difference between the 75¢ rate and the 55¢ rate, but without prejudice to any rights for the collection of such difference in rates should the 55¢

rate be held valid on appeal. Appellant has appealed from the portion of the judgment enjoining it from charging in excess of the 55¢ rate, and has filed a supersedeas bond. Appellees have appealed from the portion of the judgment denying a recovery of refunds.

Appellant briefs the appeal in two parts. In "Part I." and by propositions 1 to 10, appellant seeks to have the judgment below reversed and judgment rendered for it. In "Part II." of the brief and by propositions 11 to 79, appellant contends that the judgment should be reversed and the cause remanded, because of several alleged errors of practice.

We have reached the conclusion that appellant not only failed to establish its claim for reversal and rendition of [fol. 719] judgment in its favor, but that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55¢ rate order was either unjust and unreasonable or confiscatory. In view of this conclusion, all questions of practice presented in "Part II." of the brief go out of the case.

The Commission found in its rate order that the fair value of appellant's property used in the public service as of August 1, 1932, was $885,000; that a 3% annual reserve accrual for depreciation on such valuation was fair and reasonable; and that a 7% annual return on such valuation of the property was fair and reasonable; and that a gas rate of 55¢ for domestic use was fair and reasonable. However, the Commission reluctantly included in the property valuation an item of $124,688, representing the Pascadito-Jennings Transmission pipe line of approximately 26 miles, which was only used one day during the last 12 months of the operating period, and which the Commission found could "neither be safely nor profitably used in transporting gas" to Laredo. The Commission also included the West Jennings Gathering System at a [fol. 720] value of $10,342, although it found that these "two property items are neither used nor are they necessary as standby equipment." There was also evidence before both the trial court and the Commission, which tended to show the fair value of appellant's property to be about

$700,000; and that a 2% annual accrual for depreciation would be fair and reasonable. Appellant's witnesses placed its value at slightly over one million dollars. When the properties serving Laredo were transferred to appellant by its subsidiary and predecessor in title, Texas Border Gas Company, on October 31, 1932, the journal entry on appellant's books reflected a total value of $934,798.02, with a reserve for depreciation of $78,632.20, which included the Roma-Jennings pipe line not servicing Laredo, and which with other property was valued on the books of appellant's predecessor in title in 1929, at $848,232.98. The separate value of the Roma-Jennings pipe line was not shown; but based upon these book entries and other facts, the expert witness for appellees arrived at his $698,047 present valuation of appellant's property used in servicing gas in Laredo.

On the hearing before the Commission the operating revenues and operating expenses for slightly more than the four fiscal years next preceding the hearing were used. [fol. 721] This operating period extended from June 30, 1928, through July 31, 1932, the four fiscal years being the three twelve-months periods ending, respectively, June 30, 1929, 1930, and 1931, and the twelve-month period ending July 31, 1932. The reasons stated by the Commission in the rate order for using said operating periods and employing the method used are, as follows:

"The Company presented a 'set up' of operating revenues and expenses for the 12 months period ending July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar 'set up' covering the years ending June 30, 1929, 1930 and 1931, and for the year ending July 31, 1932, a period of four years, it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken alone as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken

as the test period, nor should an average of these two years be taken.

"Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the three years 1930, 1931 and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

[fol. 722] "The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year, 1930.

"Therefore, in the light of ample lawful precedent for the taking of an average of four successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932, constitutes the test period for the computation of the rate structure upon which a fair return is to be predicated."

The gross revenues and their sources for the four fiscal years as obtained from appellant's calculations were, as follows:

"12 Months Ended	Central Pow. & Lt. Co. & Motor Fuel Products Co.	Other Sources	Total
June, 1929	$68,188.69	$222,516.93	$290,705.62
June, 1930	91,603.56	237,989.24	329,592.80
June, 1931	56,415.13	206,577.17	262,992.30
July, 1932	15,398.30	179,126.27	194,524.57"

The total operating revenues, operating expenses and net revenues as obtained from appellant's calculations for the four fiscal years were, as follows:

[fol. 723]

	"Year ended June 30, 1929	June 30, 1930	June 30, 1931	July 31, 1932
Op. Revenue ...	$290,705.62	$329,592.80	$262,992.30	$194,458.09
Op. Expenses ..	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Revenue ..	$149,452.24	$162,331.42	$129,347.66	$80,308.47"

The gross revenues and their sources for the additional operating period used in the trial court on appeal were, as follows:

"12 Mos. Ended	Revenues from Central Power & Lt. Co. and Motor Fuel Prod. Co.	Other Revenues	Total
Dec. 31, 1932.....	$8,790.20	$174,987.21	$183,777.41
Dec. 31, 1933.....	54.40	158,699.24	158,753.64"

The decrease in industrial revenues was because the Motor Fuel Products Company had ceased to do business, due to large operating losses; and because the Central Power & Light Company had completed and put in operation in Laredo its main transmission line from its central operating plant at another point, the Laredo plant, which appellant served with gas for fuel, had become a mere emergency or standby plant, and will not hereafter be used except for short periods during emergencies.

[fol. 724] Based upon the aforementioned evidence, an expert accountant employed by the appellees, after deducting the nonrecurring industrial revenues and certain questioned items of expenses, computed the net returns for each of the (5) twelve-month operating periods, ending June 30, 1929, 1930, 1931, July 31, 1932, and December 31, 1933, respectively, and averaged the annual net operating revenues available for the five years, as follows:

[fol. 725]

	12 Mo. Period Ending June 30, 1929	12 Mo. Period Ending June 30, 1930	12 Mo. Period Ending June 30, 1931	12 Mo. Period Ending July 31, 1932	12 Mo. Period Ending Dec. 31, 1933
Gross Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
(S.F. Vol. III, p. 1786.) Less Non-Recurring Revenues	68,188.69	91,603.56	56,415.13	15,398.30	54.40
(S.F. Vol. IV, p. 2115.) Total Recurring Revenue	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
(S.F. Vol. II, p. 1083-84.) Gross Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
(S.F. Vol. III, p. 1786.) Less Non-recurring Gas Purchases	22,885.04	29,529.98	21,274.18	4,176.46	.....
(S.F. Vol. II, p. 1083-84.)	$118,368.34	$137,731.40	$112,370.46	$109,973.16	$93,298.46
Less Questioned Items of Operating Expenses (S.F. Vol. III, p. 1795.)	9,663.33	16,541.54	20,198.69	27,347.05	.....
Total Net Operating Expenses	$108,705.01	$121,189.86	$92,171.77	$82,626.11	$93,298.46

[fol. 726]

Recapitulation

Total Net Recurring Revenue	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
Less: Total Net Operating Expenses	108,705.01	121,189.86	92,171.77	82,626.11	93,298.46
Net Available Return	$113,811.92	$116,799.38	$114,405.40	$96,433.68	$65,469.76

Average Annual Net operating revenue for the five 12 months' periods $101,384.02

Average Annual Net operating revenue for the four 12 months' periods, which 4 periods were presented in evidence before the R. R. Commission (June 30, 1928, to July 31, 1932) $110,362.59

Average Annual Net operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933 ..... $92,102.94

Average Annual Net operating revenue for the Two 12 months' periods ending July 31, 1932, and Dec. 31, 1933 ..... $80,951.72

In applying the several average annual net operating revenues appearing on the preceding page, the following average Annual Rates of Return are found:

1. Average net operating revenue for the Five 12 months' periods		$101,384.02
Less annual depreciation @ 3% on $885,000.00		26,550.00
Amount available for return at existing rates		$74,834.02
Average Annual Rate of Return, i.e., $885,000 divided into $74,834.02, equals	8.46%	

[fol. 727]

2. Average net operating revenue for the Four 12 months' periods, which 4 periods were presented in evidence before the Railroad Commission (June 30, 1928 to July 31, 1932)		$110,362.59
Less annual depreciation @ 3% on $885,000.00		26,550.00
Amount available for return at existing rates		$83,812.59
Average Annual Rate of Return, i. e. $885,000 divided into $83,812.59, equals	9.47%	
3. Average operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933		$92,102.94
Less 3% annual depreciation (S.F. Vol. III, p. 1745)		26,550.00
Amount available for return at existing rates		$65,552.94
Average Annual Rate of Return, i. e. $749,990 (Tr. pp. 25, and 36) divided into $65,552.94, equals	8.74%	
Average Annual Rate of Return, i. e. $885,000 divided into $65,552.94, equals	7.41%	
4. Average operating revenue for the Two 12 months' periods ending July 31, 1932 and Dec. 31, 1933		$80,951.72
Less 3% annual depreciation (S.F. Vol. II, p. 1430)		25,000.00
Amount available for return at existing rates		$55,951.72
Average Annual Rate of Return, i. e. $700,000 divided into $55,951.72, equals	7.99%	
Average Annual Rate of Return, if the items of $124,668 and $10,342 (Total $135,010) which were considered by the Commission as neither used and useful, nor necessary (Tr. pp. 25 and 36) are deducted from the rate base of $885,000: $749,990 divided into $55,951.72, equals	7.46%	

[fol. 728] Appellees offered evidence tending to show that if the 55¢ rate had been actually put into effect, it would have produced approximately 1500 additional meters, at $1.00 per month minimum, and would have increased the use of gas by present consumers. Appellant's evidence tended to show that any such increase in revenues because of the lower rate was speculative. Appellant has continuously charged and collected the 75¢ rate.

The exact calculations on which the Commission computed the 55¢ rate do not appear in its rate order, nor in the record on appeal. But appellant insists that it appears from the opinion that the Commission found the fair value of the property to be $885,000, its annual depreciation to be 3%, and 7% to be a reasonable annual return thereon, and applied such findings to the average net revenues received by appellant in the four fiscal years used in the hearing. Appellant contends that "the practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material [fol. 729] to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions." And by propositions 1 to 10, appellant in one way or another, contends that the evidence showed, as a matter of law, that the 55¢ rate order was confiscatory, and per se unjust and unreasonable, on two grounds, as follows:

1. That because the existing 75¢ rate did not yield a 7% return on the $885,000 valuation of the property from January 1, 1932, the effective date of the city ordinance, to December 31, 1933, or down to the date of the trial in April, 1934, the lower 55¢ rate would necessarily not yield a reasonable return on appellant's property.

2. That in making its calculations for the 55¢ rate the Commission assumed that appellant's revenues from January 1, 1932, would equal its revenues for the period beginning June 30, 1928, and ending July 31, 1932, which assumption was contrary to the facts, because it was assumed that the revenues from the two industrial sources which had

stopped coming in were still being collected, and because of existing depression conditions, revenues had decreased, and for which reasons the 55¢ rate would not afford a reasonable return on the fair value of appellant's property.

[fol. 730] The contention that the rate order is unenforceable because the existing 75¢ rate did not yield a 7% return on the $885,000 property valuation from January 1, 1932, to December 31, 1933, the lower 55¢ rate would necessarily not afford a reasonable return, is not sustained. The year ending December 31, 1933, was the last fiscal year of the five-year period of business operations used in the trial court. It was admittedly an abnormal year, because of high temperature prevailing during the winter months; and because of a decrease in the purchasing power of consumers, due to the business depression prevailing everywhere. The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years; the future being gauged as nearly as possible by the past experience. The reason for the rule is the fact that any business may fluctuate from year to year because of changing conditions or circumstances which may affect it; ordinarily, a test of five years or more next preceding the inquiry, if available, is selected. It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should [fol. 731] be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate. And while the equal protection, the due course, and the due process clauses of the fundamental laws of both state and nation guard against the taking of, or compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right under all conditions and circumstances to have a return upon the value of the prop-

erty so used. If actual experience for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may then be changed through proper channels. Knoxville v. Knoxville Water Co., 212 U. S., 1; Willcox v. Consolidated Gas Co., 212 U. S., 19; Public Service Com. v. G. N. Utility Co., 289 U. S., 130; Georgia Power Co. v. Com., 262 U. S. 625; Louisville v. Cumberland Tel. & Tel. Co., 225 U. S., 430; Brush Electric Co. v. [fol. 732] City of Galveston, 262 U. S. 443; Reno P. L. & W. Co. v. Com., 298 Fed., 790; Los Angeles Gas & Electric Cor. v. Com., 58 Fed. (2) 256 (affirmed 289 U. S. 287); Denver Union Stockyards Co. v. United States, 57 Fed. (2), 735; St. Joseph Stockyards Co. v. United States, 11 Fed. Sup., 322.

In the instant case appellant has continuously charged and collected the 75¢ rate; hence no actual test has been made under the lower 55¢ rate. An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this court would not be warranted in holding that the lower rate was either confiscatory, or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant failed, as a matter of law, to show the rate either confiscatory or unjust or unreasonable. The $885,000 valuation of appellant's property by the Commission was extremely liberal, because it included at a valuation of more than $135,000 the two pipe lines which the undisputed evidence showed to be useless except as emergency or standby equipment, and their value for such purposes was not shown. So when the property valuation is pared down to this lowest valuation (about $700,000), and doubtful items of expenses are deducted, the net revenues re- [fol. 733] ceived by appellant under the 75¢ rate for the year ending December 31, 1933, would afford more than a 11% return. And calculations based on the $700,000 valuation and the estimated difference in revenues between the 55¢ rate and the 75¢ rate, show a return of more than 7% for the year 1933. But even if the lower rate did not or would not yield a return of 7% for the year 1933, this court would not be warranted in enjoining the enforcement of the rate, because the test period was too short, no actual

test was made under the lower rate and the undisputed evidence showed the year to be abnormal.

Nor do we sustain appellant's second above stated ground as showing that the 55¢ rate would not as a matter of law afford a reasonable return on its property, because the Commission assumed, contrary to the evidence showing loss of non-recurring industrial revenues and decreasing revenues during the year 1932, that the revenues from and after January 1, 1932, would equal the average revenues for the June, 1928, to July, 1932, period used in the calculation fixing the 55¢ rate. If by this proposition appellant contends that only the operating revenues and expenses for the year ending July 31, 1932, should have been used by the Commission in making its calculations and in fixing the 55¢ rate, then we have hereinabove determined the question against appellant.

[fol. 734] Nor do we sustain the ground urged, if it is the contention of appellant that the Commission erroneously based its calculations in fixing the 55¢ rate upon the average net revenues for the four fiscal years used by it, because the "practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions."

As hereinabove stated, the calculation upon which the Commission based the 55¢ rate order is not shown in the evidence; nor does it appear to be material on this appeal as to what method or calculation the Commission used, because the only ground alleged by appellant as showing the rate order to be either confiscatory or unjust and unreasonable was that the 55¢ rate would not afford a reasonable return on the fair value of appellant's property used in the public service. Under our statutes and practice, the trial of both of these issues on the appeal to the court is [fol. 735] de novo, and is controlled by the principles governing the scope of a court review on appeal of the legis-

lative function of the Commission in making or fixing a public utility rate. Lone Star Gas Co. v. Commission, — S. W. (2d), —, recently decided by this court, in which case we discussed at length the scope of judicial appellate review of a public utility gas rate fixed by the Commission. Suffice it to say here that rate-making is essentially a legislative function; that rates fixed by the Commission have the same force and effect of statutes and are subject to court review to the extent only as statutes of the same import are so subject, with the additional statutory authority of the court to determine whether the rate is unjust and unreasonable, and the inherent power of the court to determine the constitutional question of confiscation. M. K. & T. Ry. Co. v. Commission, 3 S. W. (2d), 489; affirmed 13 S. W. (2d), 678. That the rate fixed by the Commission is presumed to be valid, reasonable and just until declared otherwise by a court of competent jurisdiction. R. R. Commission v. Uvalde Construction Co., 49 S. W. (2d), 1113. That in order to overcome this presumption in favor of the validity of the rate on the constitutional ground of confiscation, the burden of proof rests heavily upon the complaining party. Dayton Power & Light Co. v. Commission, 292 U. S., 290; 79 L. Ed., 832. That in order to [fol. 736] set aside the rate as being unjust and unreasonable, the statute (Art. 6059) requires the complaining party to show "by clear and satisfactory evidence that such rate is unreasonable and unjust." That the complaining party attacking a rate as being unreasonable and unjust must allege facts which if proved would show the rate to be unjust and unreasonable as a matter of law; and to prove by clear and satisfactory evidence "which leaves no reasonable doubt in the judicial minds that the rate is unjust and unreasonable." R. R. Commission v. Weld & Neville, 96 Tex., 409; R. R. Com. v. Galveston Chamber of Commerce, 105 Tex., 101; 145 S. W. 573. That in advance of any actual test of the practical result of the new rate, the court on appeal will not disturb the rate where it is based upon conflicting evidence as to valuations of property, or as to any other item used as a basis for the calculation of the rate; because to do so would merely substitute the findings of the court or jury upon conflicting evidence for that of the Commission, and would therefore permit the court to exercise the legislative function of rate-making. R. R. Commission v. Shupee, 57 S. W. (2d), 295; affirmed

73 S. W. (2d), 505. And that by "resolving all doubts against" the appellant, "and using valuations pared down unsparingly," there could have been no reasonable doubt [fol. 737] in the judicial mind that the 55¢ rate was neither confiscatory nor unjust and unreasonable. Newton v. Consolidated Gas Co., 258 U. S., 165, 66 L. Ed. 547.

The auditor for Laredo showed in his above quoted calculations that the average net revenue for the 5-year period used in the trial court, less annual depreciation of 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 8.46%. If under the rule that in absence of any actual test of the new rate, the court must resolve all doubts against appellant, and pare down unsparingly valuations, and if the lowest valuation shown by the evidence (about $700,000) is used in the calculation, then the average net return received by appellant under the existing rate for the 5-year period, would yield an average annual return of more than 10%. The same calculations of the auditor also show that if the average net revenues for the 4-year period used in the hearing before the Commission are utilized, such revenues, less 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 9.47%. If the lower $700,000 valuation is used in the calculation, the average net revenues for the 4-year period would yield a return of more than 11%. Thus it was shown that under the existing rate appellant has received an average annual [fol. 738] return, even through several depression years, of about 11% on the value of its property used in the public service. And since an actual test of the new rate may bring in a larger return, by bringing about an increase in business, we do not feel warranted in setting the rate aside in absence of an actual test under the new rate. Brush Electric Co. v. City of Galveston, 262 U. S., 443. And manifestly the evidence of appellant did not show, as a matter of law, that the lower 55¢ rate would necessarily result in confiscation of its property; nor that the rate was unenforceable because unjust and unreasonable, when viewed in the light of aforementioned rules with regard to the quantum and character of proof required in such cases.

The rate order of the Commission, dated June 13, 1933, provided that the 55¢ rate fixed by it should be effective

from and after January 1, 1932, the effective date of the ordinance of the City of Laredo, which fixed the rate of 40¢. The Commission's order further provided, as follows:

"It is further ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the City of Laredo, for the benefit of the domestic consumers, the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order."

The trial court declared this provision of the rate order invalid and of no force and effect; but without prejudice [fol. 739] to the rights of the City of Laredo to bring suit for the refund "should this provision be held valid upon final determination of this cause on appeal." By cross-assignments of error appellees seek to have this portion of the trial court's judgment reformed so as to declare said provision for the refund valid and enforceable.

We have reached the conclusion that the provision of the rate order making the 55¢ rate retroactively effective as of January 1, 1932, and providing for the refund of any amount collected in excess thereof is valid and enforceable. The authority to initiate the proceeding to reduce the gas rate is in the City of Laredo under Art. 1175, and the utility is given the right of an appeal from the ordinance fixing the rate to the Commission under Art. 6058, the material portions of which read, as follows:

"When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo."

The appeal to the Commission under the terms of this article is essentially to review the city ordinance fixing [fol. 740] the gas rate, and since it "may make such order or decision in respect to the matter (rate) involved therein as it may deem just and reasonable," the Commission's

functions are not only legislative but quasi-judicial as well. In the exercise of these reviewing and quasi-judicial functions the Commission is authorized to suspend, pending the appeal before it, the rate fixed by the city ordinance, and to require the utility to give a bond "on such terms and conditions as the Commission may direct." Accordingly on the appeal to the Commission, appellant filed its bond, which was approved and accepted by the Commission, and which bond was conditioned as follows:

"* * * principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said city, any excess of rates or charges collected by the principal * * * over and above the rates or charges that shall be finally determined a fair and reasonable return. * * *"

The supersedeas bond filed in this appeal is similarly conditioned.

Since the Commission had the power to suspend the reduced city ordinance rate pending the appeal, it necessarily had the power to reinstate such rate if found to be just and reasonable as of its original effective date. Likewise the Commission had the power upon determining that the city ordinance rate was unjust or unreasonable, to [fol. 741] substitute its own just and reasonable rate therefor, and to make it effective as of date of the city ordinance rate for which it was substituted.

It is further manifest that the powers given the Commission by Article 6058 to review a city ordinance rate on appeal and to determine its justness and reasonableness, and if found to be unjust and unreasonable, to substitute its own just and reasonable rate therefor, are not only legislative and administrative functions, but quasi-judicial as well; and in the full exercise of such power it necessarily follows that the Commission had the power to make its own rate effective as of the date of the city ordinance rate, which it has reviewed and adjudicated as being unjust and unreasonable. See as dealing with quasi-judicial functions of utility commissions: Producers Refining Com. v. M. K. & T. Ry. Co. (Com. App.), 13 S. W. (2d), 680; Baer Bros. Merc. Co. v. Denver & R. E. Ry. Co., 233 U. S., 479; L. & M. Ry. Co. v. Finn, 235 U. S. 601. And since the Commission's functions are essentially to review and ad-

judicate the justness and reasonableness of the city ordinance rate on appeal, its jurisdiction necessarily relates back to the date of the initial proceedings in which the city ordinance rate originated and first became effective. The [fol. 742] rule is settled that a public utility commission has the power to make its rate order retroactively effective as of any date after it has actually acquired jurisdiction of the cause; and in consequence may order the refund of excessive rates paid from and after the retroactively effective date of the rate order. See State ex rel Boynton v. Public Service Commission of Kansas, P. U. R. 1933a, 415; State v. Public Service Commission (Mo.), 272 S. W., 957; Ill. R. R. Co. v. Best, 39 Fed. (2), 658.

In accordance with our above conclusions, the judgment of the trial court is reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Commission valid and enforceable, and as thus reformed the judgment of the trial court will be affirmed.

M. B. Blair, Associate Justice.

Reformed and Affirmed.

[File endorsement omitted.]

[fol. 743] In Court of Civil Appeals, Third Judicial District of Texas

No. 8176

United Gas Public Service Company

vs.

State of Texas et al.

Appeal from District Court of Travis County

Opinion by Associate Justice Blair

Judgment—October 30, 1935

This cause came on to be heard on the transcript of the record and same being inspected; because it is the opinion of the Court that there was on error in the judgment

except that said judgment should be reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Railroad Commission, valid and enforceable. It is therefore considered, adjudged and ordered that the judgment of the trial court be, and same is hereby reformed, so as to also declare the retrospective effective date and refund provision of the rate order of the Railroad Commission valid and enforceable and as so reformed, the judgment be, and same is hereby in all things affirmed,—that the appellant United Gas Public Service Company, principal and The Fidelity and Casualty Company of New York, Surety, pay all costs in this behalf expended and this decision be certified below for observance.

(Notation of record entry omitted)

[fol. 744] IN COURT OF CIVIL APPEALS, THIRD JUDICIAL DISTRICT

No. 8176

[Title omitted]

APPELLANT'S MOTION FOR REHEARING—Filed November 14, 1935

Comes United Gas Public Service Company, appellant in the above styled and numbered cause, and moves this Honorable Court to set aside its judgment reforming and, as thus reformed, affirming the judgment of the 53rd District Court of Travis County, Texas, entered April 24, 1934 (Tr. 245) and to grant appellant a rehearing, and, as the grounds for this motion, shows:

1

The Court of Civil Appeals erred in overruling and in refusing to sustain appellant's Assignment of Error No. 1, submitted as Proposition One, as follows:

"The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees,

because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and [fol. 745] that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

2

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 2, submitted as Proposition Two, as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made."

3

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 3, submitted as Proposition Three, as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel ap- [fol. 746] pellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of

the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

4

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 4, submitted as Proposition Four, as follows:

"The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

5

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 5, submitted as Proposition Five, as follows:

[fol. 747] "The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made."

6

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 6, submitted as Proposition Six, as follows:

"The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo, from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of appellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable and confiscatory,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-
[fol. 748] ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

7

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 7, submitted as Proposition Seven, as follows:

"The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-

ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

• • • • • • •

9

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 9, submitted as Proposition Nine, as follows:

[fol. 749] "The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City was beyond the judicial power of the court,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

10

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 10, submitted as Proposition Ten, as follows:

"The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July

[fol. 750] 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

11

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order was such that the record of the trial below—which in fact showed upon evidence most favorable to appellees that the existing 75¢ rate did not yield a reasonable return at the time of the Commission hearing or down to the date of trial, and that the result of the enforcement of the order for the two years following its effective date and immediately preceding the trial would leave appellant a return of only 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 respectively—failed as a matter of law to raise any issue of confiscation for determination, because such holding and the Court's judgment pursuant thereto violate the fundamental constitutional rule that a rate not [fol. 751] sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service is unjust, unreasonable and confiscatory, and the Court's judgment enforcing such order from its effective date is therefore contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

* * * * * * *

14

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order was such that the record of the trial below—which in fact showed on evidence most favorable to appellees that the existing 75¢ rate did not yield a reasonable return at the time of the Commission hearing or down to the date of trial, and that the enforcement of such order for the two

years following its effective date and immediately preceding the time of trial would leave appellant only 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 respectively—failed as a matter of law to raise any issue of confiscation until after appellant had yielded to the enforcement of such order and had charged such 55¢ rate for a time sufficiently long to remove all doubt that appellant's property had been confiscated thereby, because such [fol. 752] holding and the judgment of the Court of Civil Appeals pursuant thereto violate the fundamental constitutional rule that rates not sufficient to yield a reasonable return on the value of the property used at the time it is being used to furnish the service are void, and deny appellant, upon the facts shown to exist at the trial, a remedy to have the order declared void before it is enforced and thereby to prevent confiscation, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

15

The Court of Civil Appeals erred in holding that the evidence at the trial below showing the actual results of operations and the actual result of enforcing the Commission's 55¢ rate order from its effective date during the two years, 1932 and 1933, immediately preceding the date of trial, was insufficient, as a matter of law, to overcome the presumption in favor of the order or to raise any issue of confiscation for determination by the trial court, because the evidence most favorable to appellees relating to 1932 and 1933 showed that enforcement in those years would leave appellant practically nothing for return, and such holding and the judgment of the Court of Civil Appeals based thereon [fol. 753] violate the fundamental rule that in determining the validity and enforceability of a rate order made effective and sought to be enforced for an elapsed period of time, evidence of the actual facts, conditions and result of enforcement in such elapsed period must be given controlling legal effect, and the Court's judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

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18

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order could only be overcome either by showing that the order had been made by the Commission without substantial supporting evidence or by showing that the rate had been put into effect and that confiscation in fact was the result of its enforcement over a period sufficiently long to remove all doubt and give an average of changing conditions from year to year, because the presumption so construed and applied denies appellant the right and opportunity to have all issues of confiscation alleged to result from the enforcement of such order determined upon the independent judg-
[fol. 754] ment of the proper courts of this state both as to law and facts in advance of the actual enforcement of the order and thus denied appellant a trial and remedy to prevent confiscation in accordance with due process and due course of law, in violation of appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas, and the Court of Civil Appeals erred in failing to declare such order void.

19

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to raise any issue that the Commission's 55¢ rate order, if enforced from its effective date, would be unjust, unreasonable or confiscatory, because the Court of Civil Appeals, in aid of said presumption, gave controlling legal effect to the average of the greatly higher revenues and more favorable operating results from July 1928 through July 1932, when the evidence at the trial showed without dispute that conditions and operating results had drastically changed for the worse by January 1, 1932 as compared with the average thereof for the above stated four year period, in violation of the fundamental constitutional rule that profits in a period prior to the effective date of a rate reduction order cannot be employed to reduce
[fol. 755] existing rates which, under the conditions prevailing at the effective date of the attempted reduction, are no more than reasonable, or as a device to impose and enforce confiscatory rates for the present and future, and the Court's judgment is therefore repugnant to Sec. 1, 14th

Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

20

The Court of Civil Appeals erred in construing the quantum and character of proof necessary to overcome the presumption in favor of the Commission's 55¢ rate order, and to raise an issue in the trial below that such order was in any respect unjust, unreasonable or confiscatory, because such presumption is attached to an order referable to the police power of the State, and is therefore only a rebuttable presumption of the existence of facts to support the order, which presumption, under the law, must yield to proof of the actual facts and conditions to which the order is at any time sought to be applied, and as construed and applied by the Court of Civil Appeals to the facts and the trial in this case, the Court's holding and judgment pursuant thereto deny appellant its rights guaranteed by Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

[fol. 756]

21

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order, or to raise for determination any issue that the order was unjust, unreasonable or confiscatory, and, in aid of such presumption, in holding that it was the duty of the court to take the conflicting evidence of value of appellant's property and, selecting therefrom the lowest valuation figure, regardless of the legal admissibility of the testimony supporting such figure and completely disregarding all other testimony showing a higher value, to use such lower figure as the rate base to determine the appellant's rate of return, because evidence of value in this trial was competent only upon the issue that the Commission had unlawfully undervalued appellant's property, and it is beyond the judicial power of the courts of this State to substitute for a valuation fixed as a rate base by the Commission a rate base fixed by the Court, the judicial power being confined to setting aside the rate order if the rate base fixed therein is unlawful, and such holding and judgment of the Court of Civil Appeals pur-

suant thereto violate appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I and Article II, Constitution of Texas.

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[fol. 757] 25

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise any issue that such order was unjust, unreasonable or confiscatory, because, in aid of such holding, the Court of Civil Appeals found that the effect of enforcing the 55¢ rate in 1933 would leave appellant a net annual return of more than 7 per cent in that year, such finding being without evidence in the record to support it, and the Court's judgment pursuant to such finding violates Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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27

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise any issue that such order was unjust, unreasonable or confiscatory, because, in aid of such holding, the Court of Civil Appeals found that the effect of enforcing the 55¢ rate in 1933 would [fol. 758] leave appellant a net return of more than 7 per cent in that year, because such finding is without evidence in the record to support it and the Court's conclusion is based on material error both of fact and law, in that it appears without dispute both from the record and the Court's opinion that the Court arrived at such conclusion by substituting for the fair value of $885,000 fixed as a rate base by the Commission a lower figure of $700,000 selected from conflicting evidence at the trial on which no proper finding had been made, and such holding and the Court's judgment pursuant thereto violate appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

28

The Court of Civil Appeals erred in holding that the evidence in the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise for determination any issue that the order was unjust, unreasonable or confiscatory, because the Court, in aid of such presumption, has attempted to give to the testimony introduced by appellees on this trial, and to all inference and conclusions drawn by appellees therefrom, the quality and legal effect of undisputed and indisputable evidence, and thereby appellant has been [fol. 759] denied a trial in accordance with due process, and due course of law, and as provided by the statutes of Texas, contrary to Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and Article 6059, R. C. S. of Texas, 1925.

29

The Court of Civil Appeals erred in holding that the evidence in the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order, and to raise any issue that such order was unjust, unreasonable or confiscatory, if enforced, because the Court of Civil Appeals has attempted to aid and bolster up such holding by reciting in its opinion certain testimony or purported testimony offered at the trial by appellees, wholly ignoring all other testimony in the record sharply controverting the testimony selected and recited by the Court, and without first requiring the trial court to decide the ultimate issues of fact made by such conflicting evidence, in violation of appellant's right to a trial of the issues of confiscation upon the independent judgment of a court competent to determine the ultimate issues of fact from conflicting evidence and to apply the law thereto, [fol. 760] contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas, and Article 6059, R. C. S. of Texas, 1925.

30

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's

55¢ rate order and to raise an issue that such order was in any respect unjust, unreasonable or confiscatory, because such holding is based on the conclusion that the Commission's order was made on conflicting evidence and that in this trial, the courts of Texas are incompetent to determine any issue of confiscation raised by pleadings and proof of the Commission's unlawful undervaluation of property, unlawful understatement of proper and reasonable operating expenses and proper annual rates of return and depreciation reserve accrual, since to do so, this Court holds, would be to substitute the findings of a court for those of the Commission, when it appears that the Court directly contrary to the purported rule of law first stated, has then attempted to bolster up its holding that no issue of confiscation was raised by selecting, from conflicting testimony as to which no ultimate findings were made by a proper court, a valuation figure materially lower than [fol. 761] that fixed by the Commission, and has employed such valuation figure in reaching its conclusions, in violation of appellant's right to a trial in accordance with due process and due course of law, and with the fundamental principles of justice, contrary to Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and the statutes and laws of Texas.

31

The Court of Civil Appeals erred in holding that since the 55¢ rate order of the Railroad Commission of Texas was made upon conflicting evidence, the trial court could not consider and determine upon its own independent judgment the issues of confiscation made by pleadings and evidence as to the Commission's unlawful undervaluation of appellant's property, unlawful understatement and elimination of operating expenses, unlawful understatement of percentages for reasonable annual return and depreciation reserve accrual, and in holding that a judicial determination of these basic facts when advanced to show confiscation was not required because to do so would be to substitute the findings of the court for those of the Commission, because upon such holding this Court decreed the enforcement of the Commission's said order and thereby denied to appellant the opportunity to have these issues of con- [fol. 762] fiscation determined upon the independent judg-

ment of the courts of Texas both as to law and facts, and confiscation thereby and therefrom prevented, in violation of appellant's right to a trial in accordance with due process and due course of law under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

32

The Court of Civil Appeals erred in holding that since the 55¢ rate order of the Commission was made upon conflicting evidence of property value, the trial court could not consider and determine upon its own independent judgment the issue of confiscation made by pleadings and evidence arising from the Commission's unlawful undervaluation of appellant's property, and in holding that a judicial determination of this issue would be to substitute the findings of a court for those of the Commission, because the appellant was thereby denied the opportunity to have the issue of confiscation arising from the Commission's unlawful undervaluation of its property determined by a judicial tribunal upon its independent judgment as to law and facts, and was denied the right to have confiscation resulting therefrom prevented, contrary to appellant's right to a trial [fol. 763] in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

33

The Court of Civil Appeals erred in holding that, since the 55¢ rate order of the Commission was made upon conflicting evidence, the trial court could not consider or determine the issue of confiscation arising from the Commission's unlawful elimination of appellant's operating expenses actually and in good faith incurred in furnishing the service for which such 55¢ rate was to be charged, and in holding that a judicial determination of the Commission's unlawful elimination of operating expenses would be to substitute the findings of the court for those of the Commission, and appellant was thereby denied the opportunity to have such issue of confiscation determined upon the independent judgment of a judicial tribunal both as to law and facts, and the right to have confiscation arising therefrom prevented, contrary to appellant's right to a trial in accordance with

due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 764] 35

The Court of Civil Appeals erred in holding that, since the 55¢ rate order of the Commission was made upon conflicting evidence, the trial court could not consider or determine the issue of confiscation arising from the Commission's unlawful understatement of a proper annual accrual for depreciation reserve, such issue being made by appropriate pleadings and evidence, and in holding that a judicial determination of this issue would be to substitute the findings of the court for those of the Commission, and appellant was thereby denied the opportunity to have this issue of confiscation determined upon the independent judgment of the court both as to law and facts and was denied the right to have confiscation resulting therefrom prevented, contrary to appellant's right to a trial in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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37

The record showing that in the 55¢ rate order the Commission and others had brought this suit to enforce from January 1, 1932, the Commission had fixed fair value at [fol. 765] $885,000, and reasonable rates of annual return and depreciation reserve accrual at 7 per cent and 3 per cent respectively of $885,000, and the evidence at the trial most favorable to appellees showing that the effect of the enforcement of the order would leave appellant $10,086.25 (1-14/100 per cent of $885,000) in 1932 and $18,418.39 (2-19/100 per cent of $885,000) in 1933, the court erred in decreeing the enforcement of the order upon the ground that appellant could not raise an issue of confiscation without first putting the rate into effect and actually testing it over a period of years sufficiently long to give an average of changing conditions from year to year, and in holding that the evidence showing the effect of the enforcement

of the order for the elapsed years 1932 and 1933 was insufficient, as a matter of law, to overcome the presumption in favor of such order and to raise any issue of confiscation from its enforcement, because such holding and judgment deny appellant the opportunity and right to prevent confiscation arising from the retroactive enforcement of the order from January 1, 1932, its effective date, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 766] 40

The Court of Civil Appeals, in passing on the issue of confiscation arising under the Federal and State Constitutions, erred in refusing to find or consider the result of the enforcement of the Commission's 55¢ rate order as applied to the facts and conditions to which such order was made effective, by refusing to require the trial court to find, in the exercise of an independent judgment as to the law and facts, the return which appellant would receive for the use of its property if such order were enforced from January 1, 1932, its effective date, to the date the trial record was closed, and thus denied appellant the opportunity to have a judicial determination and review of the issue of confiscation arising from the retroactive enforcement of such order for the period of time which had elapsed from its effective date to the time of trial, and denied appellant the right to have such confiscation prevented, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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42

The Court of Civil Appeals committed material error in deciding this case, by giving to the presumption in favor [fol. 767] of the Commission's 55¢ rate order controlling legal effect over the evidence at the trial showing the facts, and particularly the facts, conditions, and operating results which had come into existence since the effective date of the rate order, because such presumption is not evidence

of any fact and vanishes in the presence of actual facts, and since the evidence of the actual facts at the trial most favorable to appellees showed that the result of enforcing the Commission's order would leave appellant for return not over 1-14/100 and 2-19/100 per cent of $885,000 respectively for the years 1932 and 1933, the judgment of the Court of Civil Appeals reforming the judgment of the lower court so as to enforce the retrospective effective date and refund provisions of the rate order and in affirming the judgment below is not supported by competent evidence, and operates to take appellant's property without due process and due course of law, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

43

The Court of Civil Appeals erred in holding that the method used by the Commission in fixing the 55¢ rate had no material bearing upon any of the issues of confiscation in this trial, since the record showed without dispute that [fol. 768] the Commission's 55¢ rate order was based on the assumption that appellant's revenues and operating results in Laredo commencing with January 1, 1932 would equal the average of the materially higher revenues and more favorable operating results for a prior four year period which commenced July 1928 and ended with July 1932, the legal effect of this method, as shown by the actual results of operations in 1932 and 1933, being to employ profits received in the past under favorable economic and operating conditions as a device to impose confiscatory rates during a period of depressed economic conditions and changed operating conditions in 1932 and 1933, in violation of appellant's right to a trial in accordance with due process and due course of law and its right to just compensation guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

44

Under the judicial system in Texas, the determination of questions of fact being for the trial court, and the only function of the Court of Civil Appeals with reference to findings of fact being to determine whether there is any or any sufficient evidence to support such findings, the Court

[fol. 769] of Civil Appeals being bound by findings of fact made in the lower court on sufficient evidence, the Court of Civil Appeals erred in decreeing the enforcement of the Commissions's 55¢ rate order in the absence of findings by the lower court upon the facts controlling the determination of the issues of confiscation raised in the trial below alleged to result from the Commission's unlawful undervaluation of appellant's property, its unlawful understatement of reasonable operating expenses, annual rates of return and depreciation reserve accrual, and the result of enforcing the order from its effective date, and in the absence of findings by the lower court of the ultimate facts controlling the determination of these issues of confiscation, the Court's judgment upholding the validity of such order and enforcing it from its effective date violates appellant's right to a trial of the issues of confiscation in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

45

The Court of Civil Appeals committed material error in deciding this case, by holding that the presumption in favor of the Commission's 55¢ rate order was so strong and the quantum of proof required to overcome this presumption [fol. 770] so great that in this trial, even the showing made upon the evidence most favorable to appellees that the retroactive enforcement of such order would leave appellant for return 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 was insufficient, as a matter of law, to raise for determination any issue that the order was unjust, unreasonable or confiscatory, because, the Court concluded, this period was too short and economic and operating conditions were too abnormal as compared with the prior four year period on which the Commission based its order, and such holding and the Court's judgment pursuant thereto violate the fundamental rule that appellant is entitled to earn a reasonable return on the property used at the time it is being used to render the service, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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49

The Court of Civil Appeals having held that under the statutes and procedure of Texas, the district court of Travis County was without power to exercise an independent judgment as to the probative force of the facts involved and the law applicable thereto on the issues of confiscation as raised [fol. 771] by appellant's answer and its evidence, the Court of Civil Appeals erred in enforcing said order and in refusing to declare the same void as being in conflict with Sec. 1, 14th Amendment, U. S. Constitution.

50

The Court of Civil Appeals having held that the district court of Travis County was the only state court in Texas having jurisdiction to determine the validity of the Commission's 55¢ rate order, and having construed the statutes of the State of Texas, and particularly Article 6059, R. C. S. of Texas, 1925, as withholding from the district court of Travis County the power to determine the question of confiscation under the Federal Constitution according to its independent judgment both as to law and facts, the Court of Civil Appeals erred in enforcing the order and in not holding the same invalid and contrary to Sec. 1, 14th Amendment, U. S. Constitution, for want of due process of law in the state procedure for testing the validity of such order and preventing confiscation from the enforcement thereof.

51

The judgment of the Court of Civil Appeals is erroneous in that the court in effect has denied to the district court of [fol. 772] Travis County the power to find and exercise an independent judgment with respect to the facts showing whether or not the enforcement of the Commission's 55¢ rate order from its effective date will result in confiscation, and inasmuch as neither the Court of Civil Appeals nor the Supreme Court of Texas, being appellate courts, have any statutory power to find such facts, appellant has been denied by this Court's holding and decree pursuant thereto the opportunity of having the independent judgment of a Texas court on questions of fact involved in a determination of the issues of confiscation and thus has been denied a trial in accordance with due process of law in violation of appel-

lant's rights under Sec. 1, 14th Amendment, U. S. Constitution.

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57

The Court of Civil Appeals erred in decreasing the enforcement of the Commission's 55¢ rate order by holding that under the provisions of Article 6059, R. C. S. of Texas, 1925, the order of the Railroad Commission must be upheld by the district court if supported by substantial evidence at the trial, and thus in effect denying appellant the right to the independent judgment of the court having the exclusive original jurisdiction to find the facts from disputed [fol. 773] evidence upon the basis of which the issue of confiscation is to be determined, which right would have been available to appellant had it been permitted to prosecute the suit which it filed in the federal court, because the provisions of Article 266 of the Judicial Code, as amended, in view of which this suit is claimed by appellees to have been instituted and appellant's suit in the federal court stayed, contemplate and require that appellant in this case have and receive the same rights and remedies in the determination of questions arising under the United States Constitution as would have been available to appellant in the federal court, and appellees having instituted this suit under the conditions imposed on them under the provisions of Article 266 are estopped to assert that appellant is not entitled to this suit to a determination of the issues of confiscation according to the independent judgment of the courts of Texas both on the law and the facts, and the Court of Civil Appeals erred in so construing the statutes of Texas as to result in a deprivation of the rights which appellant was entitled to have under the provisions of Article 266 of the Judicial Code.

58

The Court of Civil Appeals erred in rendering judgment for appellees, because not only does Article 6059, R. C. S. [fol. 774] of Texas, 1925, as construed deny to appellant due process of law under Sec. 1, 14th Amendment, U. S. Constitution, and not only does the Court treat this case and appellant's answer as an appeal under said Article

6059, but appellant has been compelled to follow the procedure outlined thereunder upon representations by appellees that every constitutional and legal right to which appellant might be entitled would be fully safeguarded and that it would be entitled to the same sort of trial to which it would have been entitled in its suit in the federal court, on the basis of which representation the federal court stayed proceedings therein, with the result that not only does appellant fail to get the kind of trial to which it would have been entitled in the federal court but is denied by this Court's judgment the opportunity of ever obtaining the same, in violation of appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution.

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66

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 11, presented as Proposition Eleven, as follows:

[fol. 775] "The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues."

67

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 12, presented as Proposition Twelve, as follows:

"Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

'Special Issue No. 1: Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "yes" or "no" ' (Tr. p. 206),

because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes."

68

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 13, presented as Proposition Thirteen, as follows:

[fol. 776] "The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that such charge, and particularly Special Issue No. 1 thereof, was multifarious."

69

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 14, presented as Proposition Fourteen, as follows:

"The court erred in giving the charge to the jury and in overruling appellant's objection thereto made upon the ground that Special Issue No. 1 thereof submitted to the jury a question of law for determination."

* * * * * * *

73

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 18, presented as Proposition Eighteen, as follows:

"The court erred in submitting the case to the jury upon the charge given, over appellant's objection thereto seasonably made, upon the ground that submission in this manner denied appellant a trial in accordance with due process of law upon appellant's defenses of confiscation under the Federal Constitution."

74

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error [fol. 777] No. 19, presented as Proposition Nineteen, as follows:

"The Court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing

the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal, questions as to the existence and sufficiency of evidence to support the verdict and judgment."

75

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 20, presented as Proposition Twenty, as follows:

"The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a non-delegable duty of the court, and such verdict and judgment are, therefore, void."

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85

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 29, presented as Proposition Twenty-nine, as follows:

[fol. 778] "The court erred in failing and refusing to submit to the jury, when seasonably requested by appellant, appellant's specially requested issue No. 10 (Tr. p. 134), asking the jury to answer what was the fair value of the physical operating properties of appellant used and useful to serve Laredo in 1933, and in refusing to give, in connection therewith the definition contained in appellant's specially requested issue No. 9 (Tr. p. 132)."

* * * * * * *

87

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 31, presented as Proposition Thirty-one, as follows:

"The court erred in refusing to submit to the jury appellant's specially requested issue No. 12 (Tr. p. 138), asking the jury to state what was the fair value of appel-

lant's physical operating properties used and useful in 1932 to serve the City of Laredo."

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89

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 33, presented as Proposition Thirty-three, as follows:

"The court erred in failing and refusing to submit to the jury the appellant's specially requested issues Nos. 14, [fol. 779] 15, 16 and 17 (Tr. pp. 142, 144, 146, 148), asking the jury to determine reasonable amounts for materials and supplies, cash working capital and going value for appellant's said physical operating properties during the year 1933."

90

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 34, presented as Proposition Thirty-four, as follows:

"The court erred in refusing and failing to submit the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 14, 15, 16 and 17."

91

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 35, presented as Proposition Thirty-five, as follows:

"The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 19 (Tr. p. 152), asking the jury to determine the reasonable cost to appellant of the gas at well mouth which appellant served to Laredo."

92

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error [fol. 780] No. 36, presented as Proposition Thirty-six, as follows:

"The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out to the court in appellant's specially requested issue No. 19."

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99

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 43, presented as Proposition Forty-three, as follows:

"The court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 25 and 26 (Tr. pp. 164, 166), asking the jury to answer what percentage of reproduction cost new of depreciable items of distribution system property should be set aside as an annual reserve accrual in 1932 and 1933."

100

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 44, presented as Proposition Forty-four, as follows:

"The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in appel-[fol. 781] lant's specially requested issues Nos. 25 and 26."

* * * * * * *

103

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 47, presented as Proposition Forty-seven, as follows:

"Similarly, the court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 28, 29, 30 and 31 (Tr. pp. 170, 172, 174, 176), requesting the jury to determine the percentages of reproduction cost new of the depreciable items of the transmission and gathering system properties required to constitute a reasonable annual reserve accrual and the reproduction cost new of depreciable items of said transmission system and gathering system properties."

104

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 48, presented as Proposition Forty-eight, as follows:

"The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in

appellant's specially requested issues Nos. 28, 29, 30 and 31."

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[fol. 782] 140

The Court of Civil Appeals erred in holding in its opinion (p. 6) that because the Pescadito-Jennings pipe line and West Jennings gathering system were, in the opinion of the Court, "reluctantly included" by the Commission in the fair value of appellant's property found as the basis for prescribing the 55¢ rate, that it was within the judicial power of the Court of Civil Appeals to "pare down unsparingly" the rate base so fixed by the Commission by excluding the value of this property, because the record, viewed in the light most favorable to appellees, shows that the evidence with reference to value and usefulness of this pipe line and gathering system was conflicting, that no finding was made from such conflicting evidence in the lower court, and in this state of the record it was therefore material error for the Court of Civil Appeals to attempt to amend the basic findings of the Commission by such paring down process, which usurped both the functions of the Commission and the lower court, and the judgment of the Court of Civil Appeals based upon such unauthorized action is erroneous.

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[fol. 783] 146

The Court of Civil Appeals erred in upholding as valid the provision of the Commission's 55¢ rate order entered June 13, 1933 making the 55¢ rate retroactive to January 1, 1932, and ordering appellant to refund to the City of Laredo for the benefit of Laredo gas consumers the difference between the amounts collected from January 1, 1932 computed at the 75¢ and the 55¢ rates, and pursuant to such holding, in reforming the judgment of the district court so as to compel appellant by mandatory injunction to make such refunds, because all the evidence introduced at the trial, including the evidence of appellees as well as the evidence of appellant, show that the effect and result of enforcing such order from January 1, 1932 would deprive appellant of a reasonable return and would be unjust, unreasonable and confiscatory, and the Court's judgment

therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 16, 17 and 19, Article I, Constitution of Texas.

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150

It appearing in the record that from January 1, 1932, the appellant had continued to charge the 75¢ rate first under the order of the Commission suspending the Laredo [fol. 784] rate reduction ordinance and then under the restraining and stay orders both of the federal court and the district court, and it appearing that the Commission was without power or jurisdiction to enter any order reducing the existing 75¢ rate, because there was no finding by the Commission that the 75¢ rate yielded more than a reasonable return at the time its order was made effective, and it further appearing at the trial that the Commission's findings on which its order was based conclusively showed that the 75¢ rate was not yielding as much as a reasonable return at the time such order was to take effect and that there was no evidence that such 75¢ rate had yielded as much as a reasonable return from January 1, 1932 to the time of trial, the Court of Civil Appeals erred in rendering judgment holding such order valid and decreeing its enforcement from January 1, 1932, and such judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

151

The Court of Civil Appeals erred in rendering judgment for appellees compelling appellant, by mandatory injunction, to refund from January 1, 1932 the difference between [fol. 785] the amounts collected computed at the 75¢ and 55¢ rate, because there are no findings by the lower court showing appellant's rate of return in each year from the effective date of such order to support the Court's judgment and to serve as a basis for executing it, and the Court's judgment seeking to enforce such refunds without proper supporting findings violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

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153

It appearing from the record that since January 1, 1932, appellant has charged the 75¢ rate in Laredo first under the suspension order of the Commission, and then under the injunction and stay orders of the district court of Travis County and the federal court, and it appearing that the legal effect of the judgment of the Court of Civil Appeals is to compel appellant, by mandatory injunction, to refund from January 1, 1932 the difference between amounts collected computed at the 75¢ and the 55¢ rate, the Court of Civil Appeals erred in rendering such judgment without requiring an appropriate determination by the lower court based on findings supported by evidence showing the rate [fol. 786] of return received by appellant at the 75¢ rate in each of the years 1932, 1933, 1934, and down to the date of this Court's judgment in 1935, and the rate of return remaining after refunding the difference between the 75¢ and the 55¢ rate in each of such periods, and the Court's judgment is therefore void because without evidence and findings based on evidence to support it, and violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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157

The Court of Civil Appeals erred in holding that the evidence in this case—showing without dispute that at the time the Commission's 55¢ rate order was to take effect by displacing the existing 75¢ rate and compelling a refund of the difference between the 75¢ and 55¢ rate, the existing 75¢ rate was not yielding as much as a reasonable return and showing that the effect of the order from January 1, 1932 to the date of trial was to leave appellant practically nothing for return,—was not evidence sufficiently clear and satisfactory to raise for determination an issue that the order was unjust, unreasonable or confiscatory, and pur- [fol. 787] suant to such holding, in rendering judgment for appellees, because such holding and judgment deny appellant a trial in accordance with due process and take its property without just compensation, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

158

The judgment of the Court of Civil Appeals is void, because it was entered not upon but against the undisputed evidence in the record having controlling legal effect, namely, the evidence showing that the Commission did not find and could not have made a finding supported by competent evidence that the 75¢ rate sought to be reduced to 55¢ was yielding as much as a reasonable return by 1932, and the testimony showing that the 75¢ rate had not yielded a reasonable return from January 1, 1932 to the date of trial, and that a reduction of the rate from 75¢ to 55¢ would leave appellant practically nothing for return in 1932 and 1933 upon any lawful basis of computation shown by the trial record, and the Court's judgment therefore violates appellant's rights guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 788] 160

It appearing from the record that the Commission, having by its suspension and stay orders authorized appellant to continue charging the 75¢ rate, has employed the average of appellant's operating results from July 1928 through July 1932 as a device to order and enforce a refund of the difference between the 75¢ and 55¢ rate from January 1, 1932 and to impose such 55¢ rate for the future, and under the guise of such device has sought to avoid making any finding that the 75¢ rate was yielding an excessive return by 1932, which finding could not be supported by evidence and which, if it had been made by the Commission, was completely refuted by the evidence at this trial showing appellant's actual experience from the beginning of 1932 to the date of trial, the Court of Civil Appeals erred in upholding the validity of the Commission's order and in decreeing its enforcement, and the Court's judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and under the statutes and laws of Texas.

161

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law,

[fol. 789] to raise for determination an issue that the Commission's 55¢ rate order was in any respect unjust, unreasonable or confiscatory, because, in aid of such holding, the Court employed and gave material weight to the calculations set forth on pages 10-10a of its opinion purporting to show that in each of the five annual periods there stated, after deducting nonrecurring revenues and expenses, appellant's "Net Available Return" was respectively $113,811.92, $116,799.38, $114,405.40, $96,433.68, and $65,469.76, because there is no evidence in the record to support such purported statements of net available return, and such returns as stated involve material errors of law and fact, in that they have been computed without first deducting a reasonable annual accrual to depreciation reserve and after eliminating so-called "questioned" items of operating expenses actually and in good faith incurred by appellant without evidence to support such elimination, and therefore the Court's judgment pursuant to such holding violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

162

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law, [fol. 790] to raise an issue that the Commission's order was in any respect unjust, unreasonable or confiscatory, because in aid of such holding the Court considered and gave material weight to the purported statements of "Annual Average Net Operating Revenue" set forth on pages 10-10a of the Court's opinion immediately after the purported statements of "Net Available Return" described in paragraph 161 above, because such purported statements of "Annual Average Net Operating Revenue" are without supporting evidence in the record, and their computation and statement involve material error both of fact and law, and such statements are made after eliminating substantial amounts of appellant's operating expenses actually and in good faith incurred without competent evidence to support such elimination, and therefore the Court's judgment pursuant to such holding violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

(Prayer, signature of counsel and file endorsement omitted.)

[fol. 791] IN COURT OF CIVIL APPEALS OF TEXAS

Cause 8176

ORDER OVERRULING MOTION FOR REHEARING—January 8, 1936

"United Gas Public Service Company vs. The State of Texas. Appeal from District Court of Travis County. Appellant's Motion for Rehearing. Motion is submitted and overruled."

[fol. 792] IN SUPREME COURT OF TEXAS

Entry on the Application Docket

TRAVIS COUNTY, THIRD DISTRICT

Application No. 21776

UNITED GAS PUBLIC SERVICE COMPANY

vs.

STATE OF TEXAS et al.

Filed February 8, 1936. Refused October 7, 1936
Attorneys: (Names of attorneys omitted.)

[fol. 793] IN SUPREME COURT OF TEXAS

Application No. 21776

UNITED GAS PUBLIC SERVICE COMPANY, Plaintiff-in-Error

vs.

THE STATE OF TEXAS et al., Defendants-in-Error

Petition for Writ of Error—Filed February 8, 1936

ASSIGNMENTS OF ERROR

(Certain Assignments Omitted)

To the Honorable Supreme Court of Texas:

United Gas Public Service Company, a corporation, appellant in cause No. 8176, Court of Civil Appeals for the

Third Supreme Judicial District of Texas, styled United Gas Public Service Company v. State of Texas et al., complains of the State of Texas, Mrs. Miriam A. Ferguson, former Governor of Texas; James V. Allred, former Attorney General and now Governor of the State of Texas; Ernest O. Thompson, Lon A. Smith and C. V. Terrell, members of and comprising the Railroad Commission of Texas; the City of Laredo, a municipal corporation; Albert Martin, its Mayor; Louis Franklin, W. S. (C) Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, B. Salinas, Chas. [fol. 794] Walker and Dick Misener, members of its city governing body, or their successors in office; M. J. Raymond, its city attorney, and William McCraw, now Attorney General of Texas, and respectfully petitions this Honorable Court to issue its writ of error in this cause directed to the said Court of Civil Appeals, to the end that this case may be removed from said Court to this Court, where the record and proceedings herein may be fully reviewed and the judgment of the Court of Civil Appeals rendered herein may be reversed and judgment rendered for this plaintiff in error, or else that the case may be remanded for a new trial; and so that plaintiff in error may be accorded any and all other relief to which it may be entitled under the law.

* * * * * * *

No. 1

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 1, reading as follows:

"The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from Janu- [fol. 795] ary 1, 1932, down to the date of the trial, and that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

No. 2

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 4, reading as follows:

"The court erred in overruling appellant's motion for judgment non obstante verdicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1,1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

No. 3

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 8, reading as follows:

"The court erred in entering judgment upon the verdict of the jury herein, because the verdict of the jury could not control the court in applying the law to the facts and declaring the result, and because the evidence in the record most favor-
[fol. 796] able to appellees showed, as a matter of law, that at the date of the trial and since January 1, 1932, the existing $0.75 rate in Laredo did not yield a reasonable return on fair value, and hence there was no evidence to support the verdict and the judgment of the court based thereon."

No. 4

The Court of Civil Appeals erred in overruling and in refusing to sustain assignments of error No. 3 reading as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel appellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny ap-

pellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory,''

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-
[fol. 797] ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 5

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 6, reading as follows:

''The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of appellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable, and confiscatory'',

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

[fol. 798] No. 6

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 7, reading as follows:

''The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in

the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 7

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 9 reading as follows:

"The court erred in entering its judgment dated April [fol. 799] 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City, was beyond the judicial power of the court,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 8

The Court of Civil Appeals erred in finding that in 1933, the 75¢ rate yielded defendant a net return of more than 11 per cent, and that the enforcement of the Commission's order would have left a net return of more than 7 per cent, such finding being contrary to the undisputed evidence and being wholly without supporting evidence in the record.

[fol. 800] No. 9

The Court of Civil Appeals erred in finding that in 1933 the 75¢ rate yielded defendant a net return of more than 11 per cent, and that the enforcement of the Commission's order would have left a net return of more than 7 per cent, because such finding is wholly without supporting evidence, and is based on an error of law, in that the court stated such rates of return upon $700,000 instead of upon the valuation of $885,000 fixed by the Commission, such $700,000 being selected by the court from conflicting testimony at the trial below upon which no finding had been made.

No. 10

The Court of Civil Appeals erred in overruling and in failing to sustain assignment of error No. 3, reading as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after [fol. 801] January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made."

No. 11

The Court of Civil Appeals erred in overruling and failing to sustain assignment of error No. 5, reading as follows:

"The court erred in overruling appellant's motion for judgment non obstante verdicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made."

No. 12

The Court of Civil Appeals erred in overruling and failing to sustain assignment of error No. 10, reading as follows:

"The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, [fol. 802] because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, Fourteenth Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 13

The Court of Civil Appeals erred in holding that the evidence failed, as a matter of law, to raise an issue as to the validity of the Commission's order, because one of the material grounds for such holding was the controlling weight given by the Court of Civil Appeals to the average of operating revenues for a four-year period which commenced July, 1928, and ended July, 1932, the undisputed evidence showing that average revenues, operating and economic conditions in such four-year period were entirely different [fol. 803] from, wholly dissimilar to and no proper criterion of the revenues and conditions over which the Commission was asserting jurisdiction and to which its order applied.

No. 14

The Court of Civil Appeals erred in holding that the evidence failed, as a matter of law, to raise an issue as to the validity of the Commission's order, because the legal effect resulting from the controlling weight given to the average of revenues for the four-year period commencing

July, 1928, was to employ the higher earnings of that prior period to support the imposition of a confiscatory order and rate at and after January 1, 1932.

No. 15

The Court of Civil Appeals erred in holding that the method employed by the Commission in making the order had no bearing upon and failed to raise any issue as to the validity of the Commission's order, since the evidence showed that such method resulted in the assumption, contrary to the undisputed facts, that the revenues to which the order applied were equal to the greatly higher average revenues for a four-year period commencing July 1, 1928, [fol. 804] and that the legal effect of such method was to employ past revenues not within the asserted jurisdiction of the Commission to deny defendant just compensation for the use of its property from and after January 1, 1932.

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No. 17

The Commission by its order having asserted jurisdiction and attempted to exert its power over defendant's revenues and rates at and after January 1, 1932, by requiring such revenues to be refunded and such rates reduced, the Commission's order and the judgments of the District Court and the Court of Civil Appeals were each void for lack of a supported finding that the revenues and rates to which the order applied exceeded the standard of reasonableness prescribed by the Commission, and the Court of Civil Appeals erred in failing to so declare.

No. 18

The Court of Civil Appeals erred in enforcing the Commission's order, because such order was made by determining the reasonableness of defendant's returns from the 75-cent rate in the years 1928, 1929, 1930, on the basis of fair value of defendant's property appraised and fixed at 1932 price levels.

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[fol. 805]

No. 21

The Court of Civil Appeals erred in enforcing the Commission's order, it appearing from the undisputed evidence that the revenues and rates to which the order applied yielded substantially less than a reasonable return, and that enforcement of the order would result in confiscation.

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No. 23

The Court of Civil Appeals erred in affirming the judgment of the district court in the absence of findings in the district court of the ultimate issues of fact upon which the questions of confiscation depended.

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No. 26

The Court of Civil Appeals erred in reforming the judgment of the lower court so as to require defendant to refund the difference between the 75¢ rate and the 55¢ rate in 1932 and 1933, because the undisputed evidence showed that compliance with such order would deny defendant just compensation for the use of its property in those years.

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No. 28

The Court of Civil Appeals erred in reforming and affirm-
[fol. 806] ing the judgment below in the absence of findings in the district court of the facts upon which defendant's defenses of confiscation were based, including the defenses arising from the application of the order to defendant's demonstrated experience since the order's effective date, the Commission's unlawful under-valuation of defendant's property and the Commission's unlawful understatement of operating expenses and rates of return and depreciation reserve accrual.

No. 29

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 11, reading as follows:

"The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a

jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues."

No. 30

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 12, reading as follows:

"Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

" 'Special Issue No. 1: Do you find that the order of [fol. 807] the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "Yes" or "No" ' because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes."

No. 31

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 19, reading as follows:

"The court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal, questions as to the existence and sufficiency of evidence to support the verdict and judgment."

No. 32

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 20, reading as follows:

"The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not [fol. 808] unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit

jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a non-delegable duty of the court, and such verdict and judgment are, therefore, void."

No. 33

The Court of Civil Appeals erred in reforming and affirming the judgment below, in the absence of findings in the record of proceedings in the district court of the facts essential to an adequate and complete appellate review of the federal constitutional questions.

* * * * * * *

No. 35

The Court of Civil Appeals erred in entering judgment decreeing the enforcement of the Commission's order, by holding in effect that it was the duty of the courts of Texas to uphold such order if there was substantial evidence to support it.

No. 36

The Court of Civil Appeals erred in entering judgment decreeing the enforcement of the Commission's order, by holding in effect that the presence of substantial evidence to support the order rendered all evidence offered against [fol. 809] the validity of the order insufficient to raise an issue or to require the conflicts to be determined, thus denying defendant a trial in accordance with the independent judgment of the courts upon the facts.

No. 37

The Court of Civil Appeals, having construed the law applicable to this trial as requiring the order to be upheld if there was substantial evidence to support it, and as rendering all other evidence legally insufficient to raise an issue of validity, erred in failing to declare the order void because the trial provided for the determination of constitutional questions as thus construed was not in accordance with due process.

* * * * * * *

No. 39

The Court of Civil Appeals erred in enforcing the Commission's order upon the purported holding that the evidence was insufficient, as a matter of law, to raise an issue as to the order's validity, when the Court's opinion, taken as a whole, shows that the Court's action was not based on the holding stated above, but upon the theory that the order must be upheld if there was substantial evidence to support it, and by entirely disregarding all other evidence.

[fol. 810]

No. 40

The Court of Civil Appeals erred in enforcing the Commission's order upon the holding that the order must be upheld if there was substantial evidence to support it, because defendant was thereby denied a trial and remedy to prevent confiscation upon the independent judgment of the Court exercised in the determination of the facts to which the order applied and which had transpired since the Commission record closed.

No. 41

The Court of Civil Appeals erred in upholding the Commission's order by testing its validity upon a materially different property value and measure of operating expenses than had been fixed by the Commission as bases for making the order and determining the reasonableness of rates.

No. 42

The Court of Civil Appeals erred in selecting from the testimony at the trial the lowest figure for property value presented by plaintiffs' witness, and in employing such figure to test the validity of the order, because such testimony was material and admissible only for the purpose of showing whether the $885,000 rate base was unlawfully [fol. 811] fixed and required the order to be set aside—and was not admissible or effective to supply the Court with power to prescribe a new lower rate base.

* * * * * * *

No. 45

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order, because although the

record contained full and direct evidence of the actual facts and conditions to which the order applied, the Court nevertheless weighed the presumption in favor of the order as evidence in entering its judgment.

No. 46

The Court of Civil Appeals erred, in entering its judgment herein, in failing to give controlling weight and legal effect to the direct evidence of the actual facts already in existence to which the order applied.

No. 47

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order from January 1, 1932, by holding that the undisputed evidence showing that the enforcement of the order would leave defendant a return of less than 2 per cent for the two years following the order's effective date, when measured by the Commis- [fol. 812] sion's standards, failed to raise so much as an issue that the order was in any respect unjust or unreasonable, or that its enforcement would be confiscatory.

No. 48

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order by holding that, because defendant had not complied with the order, the undisputed evidence showing that the enforcement of the order from its effective date to the date of trial would deny defendant any return whatsoever on more than $625,000 of the $885,000 rate base fixed by the Commission, was insufficient to raise even an issue that the order was in any respect unjust or unreasonable, or that its enforcement would be confiscatory.

No. 49

The Court of Civil Appeals erred in holding that defendant was required to comply with the Commission's order for a period of years before defendant could invoke the judicial power of the courts of Texas to hold the order invalid, even though the undisputed evidence showed that the higher existing rates, which were in effect during the period regulated by the order, had failed by a wide margin to yield a reasonable return, because such holding and the

[fol. 813] Court's judgment pursuant thereto denied defendant a judicial remedy to prevent the confiscation resulting from the enforcement of the order.

No. 50

The Court of Civil Appeals erred in holding that defendant could not raise any issue as to the validity of the Commission's order or prevent its enforcement until defendant had complied with such order for such period of years as would constitute a test, and in entering judgment enforcing the order upon such holding, because defendant was thereby denied a determination of its defenses of constitutional invalidity because of the Commission's arbitrary and unlawful undervaluation of defendant's property, elimination of operating expenses, and understatement of reasonable rates of return and reserve accrual. Compliance with the order would shed no light on these issues.

No. 51

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order by holding that the evidence adduced was insufficient, as a matter of law, to even raise an issue as to the validity of the order, because the evidence primarily employed by the Court in reaching this [fol. 814] conclusion was the evidence introduced by plaintiffs showing operating results from July 1928 through July 1932, defendant's testimony being completely ignored.

* * * * * * *

No. 56

The Court of Civil Appeals erred in finding that the 75c rate yielded a net return of 11 per cent in 1933, and that the enforcement of the Commission's order would still leave defendant in excess of a 7 per cent return in that year, because there was no evidence to support the finding.

* * * * * * *

No. 58

The Court of Civil Appeals erred in finding in effect that figures called "Net Available Return" on pages 10-10a of the Court's opinion were in fact the amounts which were

received as return and as compensation for the use of defendant's property during the years shown by said calculation, after deducting nonrecurring items, because such finding is erroneous and misleading, in that the so-called "Net Available Return" was stated before deducting the [fol. 815] annual accrual to the depreciation reserve and and by eliminating as "Questioned Items of Operating Expense" certain operating expenses actually incurred without competent evidence to support such elimination.

No. 59

The Court of Civil Appeals erred in finding in effect that the result of enforcing the Commission's order was shown by the "Annual Rates of Return" set forth under subsections 1-4 of such calculations, because such calculations unlawfully eliminate operating expenses actually incurred, are based in material part on a rate base greatly less than that found by the Commission, and conceal, rather than disclose, the revenues and rates of return to which the order actually applied, by averaging in other revenues not affected by the order.

* * * * * * *

No. 62

The Court of Civil Appeals erred in not holding that the jury verdict was a nullity, requiring the judgment based thereon to be set aside and the case remanded for another trial, because the verdict was not a determination of the disputed questions of fact on special issues, but was the answer of the jury upon the law of the case.

[fol. 816] No. 63

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's assignment of error No. 13, reading as follows:

"The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that such charge, and particularly Special Issue No. 1 thereof, was multifarious."

* * * * * * *

No. 66

The Court of Civil Appeals erred in refusing to pass upon and in failing to sustain assignments of error Nos. 21-34, presenting error in the refusal of the trial court to submit to the jury special issues for determination of the ultimate facts with reference to the fair value of defendant's property used and useful to serve Laredo.

No. 67

The Court of Civil Appeals erred in refusing to pass upon and in failing to sustain assignments of error Nos. 36-48, presenting error in the refusal of the trial court to submit to the jury special issues for determination of the ultimate facts with respect to a proper annual accrual to the depreciation reserve and the proper bases therefor.

* * * * * * *

[fol. 817]

No. 71

The Court of Civil Appeals erred in entering judgment herein based in material part upon the holding that the undisputed evidence required the elimination from the $885,000 rate base fixed by the Commission an item of $135,000 representing the value of the Pescadito-Jennings pipe line and gathering system, because such action was unauthorized and the finding upon which the same was based was contrary to the evidence.

* * * * * * *

No. 73

The Court of Civil Appeals erred in entering its judgment upon the holding that confiscation as a result of the enforcement of the order in 1933 was insufficient to raise an issue of invalidity, because the Court completely ignored the confiscation resulting from the enforcement of the order in 1932, which was an issue in the case of equal import to confiscation in 1933.

No. 74

The Court of Civil Appeals erred in entering judgment October 30, 1935, enforcing the order in toto, the Court holding in effect that since the case was tried at such a time that

[fol. 818] only actual operating results for 1932 and 1933 could, in the nature of things, be shown by direct evidence, the evidence as to 1932 and 1933 covered too short a period for an issue of invalidity to be raised thereby, because a judgment enforcing the order was not the proper legal result of such holding, even if correct, but rather a judgment of reversal and remand so that evidence for a longer period of time, which evidence had become available, could be placed in the record.

(Statements, summaries of argument, prayer, signature of counsel and file endorsement omitted.)

[fol. 819] IN SUPREME COURT OF TEXAS

App. No. 21776

[Title omitted]

ORDER DENYING WRIT OF ERROR—October 7, 1936

This day came on to be heard the application of plaintiff in error for a writ of error to the Court of Civil Appeals for the Third District and the same having been duly considered, it is ordered that the application be refused; that applicant, United Gas Public Service Company, pay all costs incurred herein.

(No opinion entered.)

[fol. 820] IN SUPREME COURT OF TEXAS

Application No. 21776

[Title omitted]

MOTION FOR REHEARING—Filed October 22, 1936

To the Honorable Supreme Court of Texas:

United Gas Public Service Company, plaintiff in error, herein called "company", respectfully moves this Honorable Court to reconsider and rehear its petition for writ of

error filed on the 7th day of February, 1936, and upon so doing, to set aside its order denying said petition entered the 7th day of October, 1936, and instead, to grant said petition and issue its writ of error in this cause directed to the Honorable Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas, to the end that this case may be removed to this Honorable Court, and be reviewed by it as provided by law in such cases. For convenience, the defendants iff error are called "Commission".

As its grounds for this motion, plaintiff in error respectfully shows:

1

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because the appli- [fol. 821] cation of the order of the company's experience involved in its enforcement available at the time of trial was shown by all of the evidence to result in denying the company more than $10,086.25, as compensation for the use of its property in 1932 (being a return of 1-1/10 per cent on $885,000) and to deny more than $18,408.39 as compensation for the use of its property in 1933 (being a return of 2-1/10 per cent on $885,000), the company being entitled under the terms of the order to a net annual return of 7 per cent of $885,000, an annual net compensation of $61,950, and therefore the judgment enforcing the order is void because it imposes confiscation, in violation of the company's rights under Section 1, Fourteenth Amendment, United States Constitution.

2

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part on an unsupported conclusion of the intermediate appellate court that enforcement of the order in 1933 would leave the company a net return of more than 7 per cent on $700,000, said conclusion being contrary to all of the evidence in the record, and the judg- [fol. 822] ment based thereon being void as imposing confiscation, in violation of Section 1, Fourteenth Amendment, United States Constitution.

3

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because in such

judgment improper legal effect was given to the general presumption of validity indulged in favor of the Commission's order on account of its character as a legislative act, by deciding the issue of confiscation upon said presumption and not upon the actual facts to which the order applied, contrary to Section 1, Fourteenth Amendment, United States Constitution.

4

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part upon a calculated figure which represented the average of 1933 net revenues at the 75 cent rate with the purported net revenues at this rate during four prior fiscal years, which years included a period commencing July, 1928 and ending July, 1932, which calculated figure was a fictitious and arbitrary basis for determining confiscation in direct conflict with the result [fol. 823] of enforcing the order upon the actual facts to which the order applied, the judgment being a denial of due process of law in the determination of confiscation and because imposing confiscation, contrary to Section 1, Fourteenth Amendment, United States Constitution.

5

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because there was eliminated from the computation of net revenues in the four prior fiscal years very substantial outlays for operating expenses incurred in furnishing the gas which produced such revenues, without any competent evidence in the record to support such elimination, which action aggravated the unlawful result of the calculated revenue basis and widened the margin of conflict between this fictitious figure and the application of the order to the actual revenues in fact involved in the order's enforcement, thus denying determination of confiscation and imposing confiscation contrary to due process, in violation of Section 1, Fourteenth Amendment, United States Constitution.

6

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because the cal-

[fol. 824] culated figure representing the average of 1933 net revenues and revenues for prior fiscal years was stated as a rate of return on $700,000, thus further aggravating the unlawful result of employing the fictitious revenue calculations and further widening the conflict between the arbitrary results of this calculation and the application of the order itself to the actual revenues which are in fact involved in the enforcement of the order, being a denial of a lawful determination of confiscation and the imposition of confiscation contrary to due process, in violation of Section 1, Fourteenth Amendment, United States Constitution.

7

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because the record appropriately raised by pleading and supported by proof the company's claim of confiscation from the Commission's unlawful undervaluation of the company's property at $885,000, the company being thereby denied a determination of this issue of confiscation in the exercise of an independent judgment based on a consideration of all pertinent facts, contrary to Section 1, Fourteenth Amendment, United States Constitution.

8

The State Supreme Court erred in sustaining the judg-
[fol. 825] ment of the intermediate appellate court, because there was appropriately raised by pleadings and supported by proof the company's claim of confiscation from the Commission's understatement of a proper annual depreciation reserve accrual, the company being denied a determination of this issue in the exercise of independent judgment, contrary to Section 1, Fourteenth Amendment, United States Constitution.

9

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part upon the conclusion that the evidence showing the facts to which the order actually applied was insufficient, as a matter of law, to show confiscation, in that the company had not complied with the

order by making the prescribed refunds and charging the 55 cent rate, this conclusion being contrary to the undisputed evidence that the enforcement of the order would not only deny the company practically all compensation but that the 75 cent rate had failed by a substantial margin to yield a reasonable net return on $885,000 during the period regulated by the order, such judgment denying the company a judicial remedy to prevent confiscation, con- [fol. 826] trary to Section 1, Fourteenth Amendment, United States Constitution.

10

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because the scope of the trial and appellate review which was afforded the company in the courts of the state did not provide a lawful judicial hearing as to confiscation in the exercise of independent judgment as to both law and facts and therefore the Commission's order and the judgment enforcing it are each void because in conflict with Section 1, Fourteenth Amendment, United States Constitution.

11

The State Supreme Court erred in sustaining that part of the judgment of the intermediate appellate court enforcing the refund provisions of the Commission's order, because such judgment was entered and sustained without judicial findings essential to a lawful determination that the Company would be allowed just compensation after making such refunds, contrary to the company's right to due process of law safeguarded by Section 1, Fourteenth Amendment, United States Constitution.

12

The State Supreme Court erred in sustaining that part [fol. 827] of the judgment of the intermediate appellate court which permanently enjoined the company from charging more than the 55 cent rate until the Commission's order was modified or set aside, because the judgment was not confined to the facts actually involved in the enforcement of the order and shown by the record, but was made to speak of and adjudicate the validity of the order under

unknown future conditions, contrary to the company's rights under Section 1, Fourteenth Amendment, United States Constitution.

13

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court holding the Commission's order valid and decreeing its enforcement, because the Commission, as a prerequisite to its order reducing the 75 cent rate and requiring refunds from the revenues produced thereby, made no finding that such rate or revenues were unreasonable and the absence of such finding and the record at the trial showing that such a finding, if made, would be without supporting evidence, operate to deny company a lawful determination of its rights in accordance with due process of law, contrary to Section 1, Fourteenth Amendment, United States Constitution.

14

As additional grounds for this motion, the company adopts the Assignments of Error set forth in its Petition [fol. 828] for Writ of Error, being First-Seventy-fourth Assignments of Error, both inclusive. These Assignments are not repeated in this motion because they are already before this Honorable Court in printed form in said petition.

(Prayer and signature of counsel omitted.)

IN SUPREME COURT OF TEXAS

Mo. No. 12899

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—December 30, 1936

For rehearing of App. No. 21776. Overruled.

(No opinion entered.)

[fol. 829] [File endorsement omitted]

[fol. 830] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—Filed February 1, 1937

To the Clerk of the Supreme Court of Texas:

You are hereby requested to make and certify a true copy of the following from the record of the proceedings of the Supreme Court of Texas upon the application of United Gas Public Service Company for writ of error directed to the Court of Civil Appeals for the Third Supreme Judicial District of Texas in cause No. 8176:

[fol. 831] 1. Statement from your records showing the date that said petition for writ of error and record were received and filed, and that said proceeding became No. 21,776, upon Application Docket of the Supreme Court of Texas.

2. The copies of the orders of the Court of Civil Appeals accompanying said record.

3. From the petition for writ of error of United Gas Public Service Company, the opening paragraph, and the following numbered assignments of error: 1-15, 17-18, 21, 23, 26, 28-33, 35-37, 39-42, 45-51, 56, 58-59, 62-63, 66-67, 71, 73-74.

4. The order of the Supreme Court of Texas entered October 7, 1936 refusing said application for writ of error, with your endorsement showing that no opinion was entered in connection therewith.

5. From the motion for rehearing filed by United Gas Public Service Company, the opening paragraph, the paragraphs stating the grounds of the motion, and the prayer, with your endorsement showing the date of filing and that said motion became No. 12,899 on the Motion Docket of the Supreme Court of Texas.

6. The order of the Supreme Court of Texas entered December 30, 1936, overruling said motion No. 12,899, with [fols. 832-833] your endorsement showing that no opinion was entered in connection therewith.

7. This præcipe, and notice and acknowledgement of service thereof.

8. Your certificate, including therein your statement as to when the record was returned to the Court of Civil Appeals.

Dated: 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fol. 834] Orders certified from the Court of Civil Appeals, Third District, in connection with the application for writ of error by United Gas Public Service Company, also the appellees' acknowledgment of service of this præcipe, omitted from this transcript, because the orders and acknowledgment of service have been included in the transcript certified by the clerk of said Court of Civil Appeals, to the Supreme Court of the United States.

[fol. 835] CLERK'S CERTIFICATE

I, S. A. Philquist, Clerk of the Supreme Court of Texas, do hereby certify that the above 42 pages contain true and correct copies of entries on the application docket of the Supreme Court of Texas, on the motion docket of said Court and on the application fee book of said Court in Application No. 21776, styled United Gas Public Service Company, Plaintiff in Error, vs. State of Texas, et al., Defendants in Error, from Travis County, Third District, and that the portions of the petition for writ of error and motion for rehearing of said Plaintiff in Error are true and correct copies from the originals thereof.

I further certify that on the 30th day of December, 1936, the record, statement of facts, briefs, and all other papers in said cause (except the petition for writ of error, the reply thereto, the motion for rehearing and the orders of the Court of Civil Appeals) were by me returned to Hon. R. E. Moore, the Clerk of the Court of Civil Appeals, for the Third Supreme Judicial District.

In Testimony Whereof, witness my hand and the seal of the Supreme Court of Texas, this the 19th day of February, 1937.

S. A. Philquist, Clerk, by J. P. Byrne, Deputy. (Seal Supreme Court of the State of Texas.)

[fol. 836] [File endorsement omitted]

[fol. 837] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN, TEXAS

[Title omitted]

ORDER OF THE CHIEF JUSTICE OF THE COURT OF CIVIL APPEALS DENYING PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 7, 1937

On the 7th day of January, 1937, came appellant, United Gas Public Service Company, by its counsel and presented its petition for appeal to the Supreme Court of the United States, its assignment of errors, its prayer for reversal, its statement as to jurisdiction, and forms for an order allowing the appeal, citation, cost bond, and stay and supersedeas order, all in connection with said petition for appeal.

It appearing that on October 30, 1935, this Court of Civil Appeals, in cause No. 8176, entered judgment upholding the validity of, against all appellant's claims that said order was repugnant to the due process and equal protection [fols. 838-839] clauses of the Fourteenth Amendment to the Constitution of the United States, and enforcing by injunction a certain gas rate reduction and refund order entered, on June 13, 1933, by the Railroad Commission of Texas, which order prescribes a new lower gas rate and refund of collections at the higher existing rate in respect of domestic gas service in the city of Laredo, Texas; and,

It appearing that, following this Court's denial of appellant's motion for rehearing on January 8, 1936, said cause has been pending on application for writ of error to the Supreme Court of Texas, which application was denied October 6, 1936, and motion for rehearing thereon overruled December 30, 1936. And it further appearing that the record in said cause has been returned to and is now in the possession of this Court of Civil Appeals and that this Court of Civil Appeals is the proper court to issue mandate herein, but that such mandate has not yet been issued.

Said petition for appeal and said other papers presented therewith being duly considered, I, James W. McClendon, Chief Justice of said Court of Civil Appeals for the Third

Supreme Judicial District of Texas, decline to allow said appeal.

Dated this 7th day of January, 1937.

James W. McClendon, Chief Justice, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. 840] [File endorsement omitted]

[fol. 841] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—Filed February 1, 1937

To the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an order of appeal allowed on January 16, 1937, in the above entitled cause by Mr. Justice Cardozo, and to include in such transcript of record the following from the record on file in this cause:

[fol. 842] A

From the Transcript certified on June 29, 1934 by Geo. H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in Cause No. 52,774 on the docket of the Fifty-third District Court of Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, the following:

	Page of Transcript
1. The plaintiffs' original petition, filed in the district court of Travis County, Texas by the Railroad Commission and others on July 26, 1933	2– 12
2. From the ordinance of the city of Laredo dated December 31, 1931, which is attached to said plaintiffs' original petition as Exhibit A, the following:	
(a) The ordaining clause, which commences "Now, Therefore, Be It Or-	

	Page of Transcript
dained * * *'' and Section 1 (a) down to, but not including, Section 1 (b)	14
(b) All of Sections 2, 3 and 5 of this ordinance	15
[fol. 843] 3. The entire opinion and the entire rate and refund order of the Railroad Commission, both entered June 13, 1933, which opinion and order are one instrument and are attached to the plaintiffs' original petition as Exhibit B thereof	17– 38
4. All of the stay order of the 53rd district court of Travis County, entered on July 26, 1933, staying enforcement of said order of the Commission last above mentioned	39– 40
5. From the Stay Order of the Federal Court filed August 7, 1934, the following:	
(a) All of the first paragraph commencing ''On this the first day of August, 1933 * * *''	41
(b) From the first paragraph on p. 44 of the Transcript, which paragraph commences ''And the defendants herein having * * *'' down to the end of the order on p. 47 of the Transcript	44– 47
6. From Defendant's First Amended Original Answer filed March 5, 1934, the following:	
From the section containing demurrers, [fol. 844] which is headed ''A'', and commences on p. 48 of the Transcript, paragraph 2, including subsections (a) and (c) of this paragraph, but omitting subsection (b) thereof; also par. 4	48– 49
All of Paragraphs I and II, which commence on p. 56 of the Transcript	56– 61
Paragraph III, subsections (a) and (b)	61
Paragraph VIII, subsection (b) which commences with the last line of p. 65 of the Transcript, but omitting subsections (a) and (c) of this paragraph	65– 66

	Page of Transcript
Paragraph VIII, commencing at the top of page 67 and extending through the third line on page 70 of the Transcript. (Note: There are two paragraphs numbered VIII, and it is the second such paragraph that is called for here)	67– 70
Paragraphs IX and X	70– 74
Paragraphs XI and XII	73– 77
The prayer and verification	77– 78
7. The first three paragraphs of the District Court's Order of March 7, 1934 overruling [fol. 845] Demurrers and Exceptions	96
8. From Defendant's Motion to Discharge the Jury, the following:	
(a) The first two paragraphs on p. 98 of the Transcript	98
(b) From the paragraph on page 98 of the Transcript commencing "The submission of any issue * * *" to the end of the motion on p. 99 of the Transcript	98– 99
(c) The order overruling this motion noted thereon and appearing at the bottome of p. 99 of the Transcript	99
9. Defendant's motion for instructed verdict and order overruling this motion noted thereon	101–102
10. Defendant's motion for judgment denying enforcement of the Commission's order for 1932, and order overruling motion	103–104
11. Similar motion and order as to 1933	107–108

[fol. 846] B

From the Statement of Facts setting forth the testimony given and the exhibits offered and received in evidence at the trial of said Cause No. 52,774 in the 53rd District Court of Travis County, Texas, such Statement of Facts consisting of nine separately bound volumes, the first four volumes numbered I, II, III and IV, and the last five volumes designated A, B, C, D and E, which Statement of Facts was filed, after final approval, by Geo. H. Templin, District Clerk, on the 8th day of June, 1934, and was filed in this

Court of Civil Appeals on the 21st day of June, 1934, the following, and in the following order:

(Note.—In making this portion of the Transcript, please omit all unnecessary matter, including all objections to testimony, all comments and arguments on such objections, all rulings thereon and all the exceptions taken to such rulings. At the point of each such omission, write "Plaintiffs' (defendant's) objection overruled," where the objection was overruled and exception taken, or write "Objection made, sustained, and offer of proof made by plaintiffs (defendant)," where the objection was sustained, and of-
[fol. 847] fer of proof made. Please omit repetition of questions or answers where the record shows that the repetition was because the witness or the court did not understand the question, or counsel or the court did not understand the answer, also unanswered questions and like matter. Please confine the portions of the record on the pages designated to the questions and answers directly bearing upon the particular ultimate fact about which the witness is testifying).

Plaintiffs' Testimony

1. From the testimony of C. F. Petet, a witness for plaintiffs, appearing on pp. 11-14, S. F. Vol. I, those parts showing he was a witness called by plaintiffs, that he was Secretary of the Railroad Commission of Texas, that he identifies a certified copy of the opinion and order of the Commission entered in the proceeding referred to therein, and that such copy is offered and received in evidence as Plaintiffs' Exhibit No. 3. Please note at this point in the record that such Exhibit No. 3 is the same identical instrument that was attached to plaintiffs' original petition as Exhibit B thereof, which instrument has already been included as pp. —— thereof in the transcript you are certifying.

[fol. 848] 2. From p. 14, S. F. Vol. I, the stipulation appearing at the top of the page, and from the same page, statement that plaintiffs rest.

Defendant's Testimony

3. From the testimony of Henry Beck, a witness for defendant the following from S. F. Vol. I:

(a) All of p. 15.

(b) The last question on p. 16 and answer.

(c) The first question and its answer and the second question on p. 17.

(d) The answer on p. 19 which extends to, but does not include, the last three lines on p. 20.

4. From the testimony of H. E. Womack, a witness for defendant, the following:

(a) From S. F. Vol. I, p. 22, the first two questions and their answers on said p. 22.

(b) From S. F. Vol. I, that part of p. 23 commencing with "Q. Are you a certified public accountant?", and including the remainder of p. 23, all of pp. 24, 25, and 26; the remainder of the question and the first answer on p. 27; [fol. 849] the notation on p. 27 showing Defendant's Exhibit 1 received in evidence, and the first question and answer following this notation.

(c) Pages 2002-2006 of S. F. Vol. IV, being the summary sheet and the summarized supporting sheets of Defendant's Exhibit 1, the Laredo operating statement for 1932.

(d) From S. F., Vol. I, commencing with the last question on p. through the answer to the first question on p. 30; from "Q. Now, are these general expenses * * *" through "as that is concerned" on p. 32; from the first question on p. 34 through the answer "A. Yes, there is," on p. 35; commencing with the last question on p. 35, pp. 36, 37 and down to and including the last answer on p. 38.

(e) From S. F. Vol. I, the last question and answer on p. 50 and all of p. 51 down to and including the notation showing introduction of Defendant's Exhibit 3.

(f) From S. F. Vol. IV, all of pp. 2065-2069, being the summary sheet and the summarized supporting sheets of Defendant's Exhibit 3, the Laredo operating statement for 1933.

[fol. 850] (g) From S. F. Vol. I, the last question on p. 52 and extending from that point through "A. $38,932.60" on p. 53; also the statement of counsel on p. 59 offering Defendant's Exhibit 5, and the record showing such exhibit received in evidence.

(h) From S. F. Vol. IV, pp. 2109-2115, both inclusive, being defendant's exhibit 5 showing comparison of revenues, including those used as the basis for making the order and those to which the order applies, and segregating certain nonrecurring revenues)

(i) From S. F. Vol. I, the last two questions and their answers on p. 62; Beginning with first question commencing "Q. And have you made" down through the answer "A. Yes, I have" on p. 66; commencing with the first question, all of p. 67, all of pp. 68, 69, and p. 70 down through the [fol. 851] last answer reading "A. I have;" from p. 71 counsel's offer of Defendant's Exhibit 6; from p. 75 counsel's offer of said exhibit. From S. F. Vol. IV, pp. 2117-2120, include Defendant's Exhibit 6. Beginning with the last question on p. 75 of Vol. I, S. F., include pp. 76, 77, and all of p. 78, except the last question. Beginning with question which commences "Q. Tie that figure back * * *" on p. 80, include the remainder of p. 80, pp. 81, 82, except repetition of the same question and remarks of the Court and counsel; include all of pp. 83 and 84; include that part of p. 87 commencing with the second question down through the answer "A. Yes, they are" on p. 87.

(j) From S. F. Vol. I, commence with second question from bottom of p. 152, and include down to end of the answer on p. 153, which was carried over from p. 152; the last complete question and answer on p. 178; the first [fol. 852] answer and the question and answer following on p. 186; all of p. 190, commencing with first question.

(k) Comencing with second question from bottom of p. 223, S. F. Vol. I, include pp. 224 and 225; commence with p. 255 and include down through the third answer on p. 259.

5. From the deposition of E. B. Neiswanger, a witness for defendant, the following from the direct interrogatories and answers thereto:

	Page of S. F. Vol. I
No. 1 Answer only	94
No. 4 Answer only; Nos. 5, 7 and 8 and answers to each	95-96
No. 9-d and answer; No. 11 and answer: Nos. 12 and 13, answers only; No. 14 and answer	97-101
No. 15 (a) Answer only; No. 16 and answer; No. 16 (d) and answer, including the letter on pp. 104-105	102-105

6. From the testimony of H. E. Randall, a witness for defendant the following:

[fol. 853] (a) The three questions and answers on p. 111, S. F. Vol. I, showing name of witness and that he is manager of industrial sales for United Gas Public Service Company.

(b) Beginning on p. 112 S. F. Vol. I with the question commencing "Q. Mr. Randall, do you know * * *" include the remainder of p. 112 and pp. 113, 114, 115 and 116, omitting the remarks and objections of counsel, and omitting the remarks of, but not omitting the questions asked by, the Court; commence with second question from bottom p. 130, include to bottom p. 132.

7. From the testimony of W. W. Stein, a witness for defendant, the following from S. F. Vol. I:

(a) Pages 312-319, including the last answer on 319, inserting after notation showing introduction of defendant's exhibit 7 on p. 314, a copy of said exhibit.

(b) Beginning with first question on p. 321, include the remainder of p. 321, all of pp. 322, 323, 324 and 325 and p. 326 down to and including the answer "A. I do."

[fol. 854] (c) Beginning on p. 333 with the question which commences "Q. Now, Mr. Stein, based on your past knowledge * * *" include the remainder of p. 333, all of p. 334, and p. 335 down to and including the second answer on that page reading "A. It does."

8. From the testimony of M. A. Abernathy, a witness for defendant, the following:

(a) S. F. Vol. I, pp. 418, 419, and 420, excluding objections, the last question and answer on p. 422, pp. 423-428, both inclusive.

(b) Commence with the second question from bottom of p. 436, and include remainder of that part; S. F. Vol. IV, pp. 2129, 2132, 2133, 2136 from defendant's Exhibit 8; include from p. 437 down to second question from bottom of p. 442; from p. 445 to last question on p. 447.

(c) On p. 477 the question beginning "Now, you testified about * * *" and the answer thereto; commence with second question p. 478, and include through the third from last answer on that page; also the last four questions and answers on p. 479, and down through answer "A. No, that would be impossible" on p. 480.

[fol. 855] 9. From the testimony of A. D. Greene, a witness for defendant, the following:

(a) From S. F. Vol. I, include pp. 487-501, both inclusive and that part of p. 502 down to and including the second answer on p. 502, omitting objections, exceptions and remarks.

(b) From S. F. Vol. IV, include those parts of defendant's Exhibit 9 which comprise p. 2141, being the general valuation summary sheet, p. 2143, the valuation summary sheet for the distribution properties, p. 2264, the valuation summary sheet for transmission properties, and p. 2393, and the valuation summary sheet for field gathering properties.

(NOTE.—The remainder of this exhibit consists of detailed inventory sheets, showing extension of unit prices, etc. upon the individual items of each property account. Indicate the pages omitted.)

[fol. 856] (c) From S. F. Vol. I, commence with the last question on page 520, and include that question, all of pp. 521, 523, both inclusive, and all of p. 524, except the last question on p. 524; p. 535, the first three questions and their answers on p. 536; begin with first question on p. 539, include remainder of that page, and page 541, down to the offer of Defendant's Exhibit 10, omitting all matter except direct questions and answers eliciting information from the witness.

(d) From S. F. Vol. IV, pp. 2444-2451, include typed portions of Defendant's Exhibit 10.

(e) From S. F. Vol. I, commence on p. 541 following counsel's offer of Defendant's Exhibit No. 10, include the remainder of said p. 541, and pages 542-553, both inclusive, and p. 554, down to the point showing that Defendant's Exhibit 12 was received in evidence, omitting all remarks, objections, exceptions, etc.

(f) From S. F. Vol. IV, include p. 2458, being the general valuation summary sheet of Defendant's Exhibit 12.

[fol. 857] (g) From S. F. Vol. I, include p. 631 and the remainder of the direct examination of the witness, A. D. Greene, which is concluded on p. 632.

(h) From S. F. Vol. IV, p. 2453-2455 include typed portions of Defendant's Exhibit 11.

(i) Beginning with the question on p. 735 of Vol. I, S. F. which commences "Now, Mr. Greene, you may have an-

swered, include the remainder of p. 735, all of pp. 736, 737, 738 and 739, omitting remarks, objections, etc.

10. From the testimony of P. McDonald Biddison, a witness for defendant, include the following from Vol. I of the Statement of Facts:

(a) Commence with the first question asked this witness on p. 574, include the remainder of that page, and pp. 575-578, both inclusive, and that part of p. 579 ending with the answer "A. I am."

(b) Begin with the question on p. 582 which commences "Have you examined the inventory * * *", include the remainder of p. 582, all of pp. 583-590.

[fol. 858] (c) All of p. 591, 592 and down to the first question on p. 593; on p. 594, include the question which commences "Q. And what conclusion * * *", and the answer to said question, being the last answer on p. 594.

11. From the testimony of H. L. Dickerson, a witness for defendant, the following from Vol. I of the Statement of Facts:

(a) The first three questions and the first three answers on p. 660.

(b) Commencing with the first question on p. 676, the remainder of said page, including the part of the answer to the last question on p. 676, which answer is completed on p. 677.

(c) The last answer on p. 679, all of pp. 680 and 681, and down to the first question on p. 682; include the question on p. 687 which commences "Q. Mr. Dickerson, have you made studies * * *" and the answer to said question; include the answer on p. 688 which commences "A. The cost to * * *"; and the last two questions and their answers of Mr. Dickerson's direct examination.

[fol. 859] 12. From Vol. I, S. F., the offer of counsel on p. 754, commencing "The defendant now offers in evidence, the remainder of p. 754, and all of pp. 755 and 756.

13. From Defendant's Exhibit 13, being the record in the rate proceeding before the Railroad Commission, the following:

(a) From S. F. Vol. A, p. 359, commence with question beginning "Q. Taking into consideration the effect * * *"

include the remainder of questions and answers on that page; commence with the third line from the bottom of p. 362, include remainder of that page, all of pp. 363 and 364, include the answer on p. 365 beginning "A. I do not think it is equitable * * *" and the remainder of p. 365, and down to the first question on p. 366.

(b) From S. F. Vol. C, include p. 1765, being the summary sheet from appellant's reproduction cost appraisal introduced as Exhibit 1 in the Commission hearing.

(c) From S. F. Vol. C, include p. 2082, being the summary sheet of the Laredo operating statement for the 12 months [fol. 860] ended July, 1932, introduced by appellant at the Commission hearing.

(d) From S. F. Vol. A, p. 663, commence with first question asked the witness Womack, down to the answer "A. That's it" on p. 664; commence on said p. 664 with the question beginning "Q. Now, the apportionment of that general expense. * * *" include the remainder of that page, down through the last answer on p. 665.

(e) From S. F. Vol. D, include pp. 2168, 2171, 2196, 2297, being the valuation summary sheets from the appraisal introduced at the Commission hearing as City's Exhibit A, also p. 2417, the correction sheet to said exhibit.

(f) From S. F. Vol. B, commencing on p. 1026 (Vol. II, p. 10-11) with questions asked the witness Elrod to test his qualifications and the two questions and answers on the following page; commencing with the last question on p. 1120 (Vol. II, p. 104-113) down through the first answer on p. 1129; on p. 1133 (Vol. II, 117) commence with second ques-[fol. 861] tion and include down to the first statement by the Commissioner; on p. 1134 (Vol. II, 118) the question by the Commissioner as to the existence of going value, and the answer thereto; from S. F. Vol. B, p. 1198, commence with second question from bottom and include through the second answer on p. 1199. From S. F. Vol. E, include p. 2464, City's Exhibit I, and p. 2476, City's Exhibit M.

(g) From S. F. Vol. D, pp. 2450 and 2459, being pages 1 and 10 respectively of the City's Exhibit L at the Commission hearing.

(h) Commencing with the last question on p. 1493, S. F. Vol. B (Vol. II, 476-478) include p. 1494 and down to the last question on p. 1495; commence with second question from bottom of p. 1537 (Vol. II, p. 520-526) continue to the

first question on p. 1543; commencing with third answer from bottom of p. 1579 (Vol. II, p. 562) down to second question on the following page.

(i) From S. F. Vol. B, commence with testimony of W. W. Stein, recalled, on p. 1686 (Vol. II, p. 669) down to second question from bottom of p. 1692 (Vol. II, p. 675); question [fol. 862] by Commissioner Thompson on p. 1731 (Vol. II, 714) and the entire page next following; commence on p. 1734 (Vol. II, p. 717) with testimony of M. A. Abernathy and include to the third question from the bottom of p. 1737 (Vol. II, p. 720); commencing on p. 1750 (Vol. II, p. 733) with testimony of H. E. Womack and include down to the portion of p. 1757 (Vol. II, p. 740) which deals with the time of filing briefs.

Plaintiffs' Rebuttal Testimony

14. From the testimony of Leon O. Lewis, a witness for plaintiffs, the following:

(a) From S. F. Vol. I, all of p. 771 and the first question and answer on p. 772; from p. 778, counsel's offer of Plaintiffs' Exhibit 4, the notation showing such exhibit received in evidence, and the remainder of said p. 778, and the first line on p. 779.

(b) From S. F. Vol. III, pp. 1771 and 1772 of plaintiffs' Exhibit 4.

[fol. 863] (c) Commencing with the last question on p. 779, S. F. Vol. I, all questions and answers on pp. 780, 781, 782, 786, 787, 788, 789, 790, 791, 792.

Plaintiff's Rebuttal Testimony

15. From the testimony of J. P. Kinney, a witness for plaintiffs, the following:

(a) S. F. Vol. I, p. 798, except the last question on p. 798; from p. 800, beginning with the question which commences "Q. Mr. Kinney, when you first began the work • • •", include the remainder of p. 800, all of pp. 801-805, both inclusive, and p. 806, down to and including the answer which ends "• • • in setting up their depreciation."

(b) From S. F. Vol. II, p. 908, commencing with last question on that page, down to last question on cross examination on p. 911, excluding repetition.

16. From the testimony of Leon O. Lewis, resumed, the following:

(a) Commence with fourth question on p. 819, Vol. I, S. F., include remainder of p. 819, 820 and 821, down to notation showing plaintiff's exhibit 8 offered and received, [fol. 864] and the three answers and intervening questions following such notation.

(b) From S. F. Vol. III, pp. 1786, 1790 and 1794-1797, from plaintiff's exhibit 8.

(c) From p. 822 of S. F. Vol. I the question which commences "Q. That page 1 shows • • •" and the answer to said question; beginning with the last question on p. 823 of S. F. Vol. I include all p. 824, and p. 825 down to the answer "A. Before depreciation and income taxes, $65,524.16."

(d) Beginning with last question on p. 826, S. F. Vol. I, include pp. 827, 828 and first line on p. 829; beginning with second question on p. 831, include remainder of that page and all questions and answers on pp. 833, 834, 835, 836, 837, 838 down to the answer "A. It does not." on p. 838.

(e) From S. F. Vol. II, p. 857, down to last question on that page; include last question and answer on p. 858, pp. 859, 860 and 861, down to the last answer on that page; [fol. 865] commence with last question on p. 865, include p. 866 and down to the end of the first sentence on p. 867; include last 3 lines of p. 867, and the first two sentences on p. 868; beginning with last question on p. 868, include p. 869.

(f) Commencing with the second question from the bottom of p. 930, S. F. Vol. II, include 931 and down to the second question from the bottom on p. 932; commence with the second question from the top on p. 934, include 935, 936, 937, 938 and 939 down to last question on p. 939, excluding repetition, objections, etc.; include fourth question on p. 945; From first answer on p. 946, 947, 948, excluding duplications; 949, commencing with second question, 950, 951, down to the first question; begin with the last answer on p. 961, include 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, through the first answer on p. 972.

(g) Beginning with last question on p. 1004, S. F. Vol. II, include pp. 1005, 1006, 1007 down to the last question [fol. 866] on that page; begin with second question from

bottom of p. 1008, include 1009, 1010, the first line of p. 1011, the last question on p. 1012, and p. 1013, down to the last question on that p. 1013; the second question from the bottom of p. 1014, and the answer thereto; the second question from the top of p. 1018 and the answer thereto; all of p. 1020.

(h) Commencing with the second question on p. 1044, S. F. Vol. II, include remainder of that page, p. 1045 and the first two questions on p. 1046; the questions on p. 1077, and the answers thereto on p. 1078; pp. 1081, 1082, 1083, and the first question and its answer on p. 1084, excluding objections and remarks.

(i) From S. F. Vol. II, p. 1087 and the first line on p. 1088; commencing with the first question on p. 1091, down to the last question on p. 1092.

17. From the testimony of H. E. Elrod, a witness for plaintiffs, the following from S. F. Vol. II:

(a) Pages 1096 to 1104, down to defendant's objection on p. 1104 (summarize defendant's objections on pp. 1104-1109, and show objections overruled).

[fol. 867] (b) From S. F. Vol. III, pp. 1800-1803, both inclusive, being the general valuation summaries, and p. 1806, valuation summary of transmission property and p. 1865, valuation summary of distribution property.

(c) From S. F. Vol. II, commence with last question on p. 1110, include p. 1111, and down through the first answer on p. 1112; commence with third question from bottom of p. 1116, p. 1117, and down through the third answer on p. 1118; commence with third question from the bottom of p. 1184, down through the second answer on p. 1185; all completed questions and answers on p. 1198 and 1199; begin with second question on p. 1219 and include questions and answers on p. 1220; begin with the last line on p. 1230, all pages 1231, 1232, 1233, all complete questions and answers on p. 1234; begin with second question on p. 1236, and include down through the second answer from the bottom of p. 1237, begin with the second question on p. 1238, include 1239 down through the third answer on that page; [fol. 868] begin with third question from bottom of p. 1239, p. 1240 and the first answer on p. 1241; begin with the third question on p. 1246 and include down to the third question from the bottom of p. 1247; beginning with last

question on p. 1248, include all questions and answers on p. 1249; page 1256, through the third answer on that page.

(d) All questions and answers on p. 1363; the second question from the bottom on p. 1365 and its answer; begin with third question on p. 1366, pp. 1367, 1368 and through the second answer on p. 1369; the second and third questions and their answers on p. 1378; commence with second question on p. 1383, p. 1384, and the first answer on p. 1385; from the last question on p. 1385, through the second answer on p. 1386; begin with the question on p. 1388 and include through the second answer on p. 1389; the first question on p. 1390 and its answer; begin with the second question from the bottom of p. 1392 and include through the second answer on p. 1393.

[fol. 869] (e) Commence with first question of p. 1397 and include all questions and answers on that page and the following page which are not unintelligible references to maps; commence with last question on p. 1399, include pp. 1400, 1401 and p. 1403 through the third answer on that page; pp. 1410, 1411, down to second question from bottom of p. 1412; begin with second question from bottom of p. 1413 down to last question on p. 1414; begin with second question from the bottom of p. 1421, down to last question on p. 1422.

(f) Begin with third question from the bottom of p. 1424, 1425, 1426, 1427, 1428, 1429, through the first answer on p. 1430; the last question on p. 1430 and the first line on p. 1431 and p. 1433 and down to the end of the second answer on p. 1434; p. 1438 down to court's remark on that page; begin with the last question on p. 1438, p. 1439 and through the third answer on p. 1440; begin with the last question on p. 1440 and include down to the second question from the bottom of p. 1441; begin with the last [fol. 870] question on p. 1443, pp. 1444, 1445 and down to "A. You will get the same answer" on p. 1446; begin with the last question on p. 1450 and include through the first answer on p. 1451.

(g) From S. F. Vol. III, pp. 1983-1986, being Plaintiff's Exhibit 12.

(h) From S. F. Vol. II, the second and third questions and their answers on p. 1607.

18. The following testimony of Albert Martin, Mayor of Laredo, a witness for plaintiffs, in S. F. Vol. II:

(a) Page 1259, down to second answer on p. 1260; commence with last question on p. 1273, pp. 1274, 1275, 1276, down through the third answer on p. 1277; commence with last question on p. 1278, down to end of p. 1279.

(b) Begin with third question from the bottom of p. 1478 and include through the first answer on p. 1479; begin with last question on p. 1479 and include through the second answer on p. 1480; the first question and its answer on p. 1481; the first two questions and their answers on p. 1482; begin with the third question on p. 1484, 1485 and [fol. 871] down through the second answer from the bottom of p. 1486; commencing with the second question on p. 1487 include through the last answer on that page; from the first question on p. 1493, through the second answer on p. 1494.

Defendant's Surrebuttal Testimony

19. From S. F. Vol. II, the following of the testimony of J. V. Strange, a witness for defendant:

(a) The heading and third answer on p. 1542; the second question from the bottom of p. 1543 and its answer; beginning with the fourth question on p. 1544, include pp. 1545, the first question and its answer on p. 1546; commence with the second question from the bottom of p. 1546, include p. 1547, p. 1548, excluding repetition, p. 1549, p. 1550, excluding remarks and noting plaintiffs' objection, p. 1551, p. 1552, down to the last question. The last two questions and answers on p. 1553, p. 1554, pp. 1555 and 1556, excluding repetition, p. 1557, down through the first answer on p. 1558.

[fol. 872] (b) Commence with the last question on p. 1558, include p. 1559 and down to the last question on p. 1560; begin with the third question on p. 1566, and include through the fourth answer on p. 1567, excluding repetition; begin with the fourth answer on p. 1571, excluding remarks, and include the remainder of that page, and down through the third answer on p. 1572; begin with the third question from the bottom of p. 1574, include the remainder of that page; Begin with the third question on p. 1575, include the remainder of that page.

20. From the testimony of A. D. Greene, recalled, the following from S. F. Vol. II:

(a) Begin with the last question on p. 1582, and include to the bottom of p. 1583.

21. From the testimony of John S. Ivy, a witness for defendant, the following from S. F. Vol. II:

(a) His testimony on p. 1634; from the second question on p. 1636, p. 1637 and through the third answer from the bottom of p. 1638; on p. 1639, from the third question through the second answer from the bottom; begin with the [fol. 873] second question on p. 1640, p. 1641, p. 1642 and 1643, excluding repetition and remarks, p. 1644, p. 1645 to the second question from the bottom, p. 1646, excluding remarks; p. 1647, through the second answer on that page.

(b) Commence with the second question from the bottom of p. 1648, excluding incomplete statements and remarks, to the second question from the bottom of p. 1649, correcting the obvious typographical errors and excluding repetition; commence with the third question from the bottom of p. 1651, include pp. 1652, 1653 and through the second answer on p. 1654; the first question and answer on p. 1655; the last question on p. 1655 and the first answer on p. 1656; p. 1657, excluding remarks.

22. From the testimony of R. H. Hargrove, a witness for defendant, the following from S. F. Vol. II:

(a) The first, third, fifth and sixth questions and their answers on p. 1658; p. 1659, 1660, and through the last answer on p. 1661; from the second question through the next to last answer on p. 1662; p. 1663, excluding repetition [fol. 874] and remarks, down to the next to last answer; begin with the last question on p. 1664, 1665, and through the first answer on p. 1666.

23. From the testimony of P. M. Biddison, recalled, the following from S. F. Vol. II:

(a) Commence with last question on p. 1667 and include through the third answer on p. 1668; the last question commencing on p. 1669, from the last answer on p. 1670, pp. 1671, 1672, 1673 and down through the second answer on p. 1674; commence with the last question on p. 1675,

p. 1676, excluding remarks, and through the second answer on p. 1677.

24. From the testimony of H. E. Womack, recalled, the following from S. F. Vol. II:

(a) Commencing with second question on p. 1587, remainder of the direct examination, ending on p. 1588.

25. From the testimony of J. A. Phillips, a witness for defendant, the following from S. F. Vol. II:

(a) Pages 1685 and 1686.

(b) From first question on p. 1688, pp. 1689, 1690, 1691, 1692, 1693, excluding remarks, down through the first answer on p. 1694.

[fol. 875]

C

From the Transcript of proceedings in Cause No. 52,774, 53rd District Court, Travis County, Texas (which Transcript is more fully described on page 2 of this præcipe), the following:

	Page of Transcript
1. Motion of defendant to submit case on special issues and order thereon	113-114
2. Defendant's specially requested issue No. 10 (Please note in the transcript of record you are hereby requested to prepare that defendant's motion to submit the issue, and the court's action overruling the motion and refusing to submit the issue, were repeated in the same language in the case of each special issue requested)	133-134
3. Defendant's specially requested issues 12, 14, 15, 16, 17, 18, 19, 24, 25, 28, 30, with all formal parts omitted	138, 142, 144, 146, 148 150, 162, 164, 170, 174

[fol. 876]

4. Charge of the District Court to the jury filed April 5, 1934	203-206
5. The following portions of defendant's exceptions and objections to the court's charge filed April 5, 1934:	
(a) The heading	207

	Page of Transcript
(b) Lines 1-13 of Par. I on p. 208, ending with "upon this defendant's rights"	208
(c) Lines 1-6 of Par. II on p. 209 ending with "of the Court as to the law"	209
(d) Paragraphs III, IV and XI	210-211, 217-219
(e) The heading (p. 223) and subdivisions "f" and "g" of Paragraph XIII, appearing on pp. 225-226	225-226
(f) The first section of paragraph XVI, ending with "as found by the jury" on page 229	229
6. The District Court's order overruling all of defendant's exceptions to the Court's charge	231-232
[fol. 877]	
7. The verdict of the jury, filed April 10, 1934	233
8. All of defendant's motion for judgment notwithstanding the verdict filed April 12, 1934, except paragraph I thereof (p. 234), and except the acceptance of notice (p. 235-236)	234-236
9. The second paragraph of the order overruling such motion, commencing "It is, therefore, ordered" and ending "in all things overruled"	237
10. The final judgment entered April 24, 1934, omitting therefrom the charge of the Court and the verdict of the jury, noting at the point of omission that the charge and verdict as previously shown in the record were repeated verbatim in the judgments)	245, 249-251
11. The moving clause (p. 252) and the following numbered paragraphs of defendant's amended motion for new trial, filed April 24, 1934:	
[fol. 878]	
Paragraph 2	252-253
Paragraph 3	253
Paragraph 9	256
Paragraph 13	258

	Page of Transcript
Paragraph 15	258
Paragraph 26	260-261
Paragraph 28	261-262
Paragraph 50	273
Paragraph 51	273-274
Paragraph 52	274
Paragraph 59	277
Paragraph 73	281
Paragraph 78	284
Paragraphs 82-114 (Please don't quote these paragraphs, but simply certify that they assign as error the Court's refusal to submit certain issues, identifying the issues)	286-297
Paragraph 171	335-336
Paragraph 234	398
Prayer to motion for new trial	399

[fol. 879]

12. The second paragraph of the order of the District Court entered on April 24, 1934 overruling defendant's amended motion for new trial 406

D

1. An appropriate notation of the date this case was docketed in the Court of Civil Appeals, showing its style and number in said Court.

2. From the original brief of appellant United Gas Public Service Company filed in cause No. 8176 in the Court of Civil Appeals, the following numbered propositions contained in said brief, and expressly adopted therein as said appellant's similarly numbered assignments of error in said Court: 1-14; 18-20; 29-36; 41-44; 47-48. Please show by endorsement the date this brief was filed.

3. The opinion of the Court of Civil Appeals entered October 30, 1935.

4. The order or judgment of the Court of Civil Appeals reforming and affirming the judgment below.

5. From the motion for rehearing filed by said appellant [fol. 880] in said Court of Civil Appeals on November 14,

1935, the moving clause, the paragraphs set out below and the prayer, with your endorsement showing date said motion was filed in the Court of Civil Appeals:

Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 15, 18, 19, 20, 21, 25, 28, 29, 30, 31, 32, 33, 35, 37, 40, 42, 43, 44, 45, 49-51, 57-58, 66-69, 73-75, 85, 87, 89-92, 99-100, 103, 104, 146, 150, 151, 153, 157, 158, 160-162.

6. The order of the Court of Civil Appeals, entered January 8, 1936, overruling said motion for rehearing, with your endorsement showing the date said motion was submitted and overruled and that no opinion was entered upon the overruling of said motion.

7. The appropriate notation from your docket showing that the appellant's petition for writ of error to the Supreme Court of Texas was received and filed by you February 7, 1936, and that said petition, with the entire record, were transmitted to the Supreme Court of Texas on February 8, 1936.

8. Copies of all orders certified to the Supreme Court of Texas in connection with said application for writ of error, except those which may have been designated above.

[fol. 881] E

1. Include the transcript of proceedings in the Supreme Court of Texas in this cause, which transcript appellant has requested from the Clerk of said Court.

F

1. Docket entries of the Court of Civil Appeals in said cause No. 8176, whereon there has been noted:

(a) Denial of appellant's petition for writ of error by the Supreme Court of Texas on October 7, 1936.

(b) Overruling of appellant's motion for rehearing by the Supreme Court of Texas on December 30, 1936.

(c) Date the record was returned by the Supreme Court of Texas to said Court of Civil Appeals, with appropriate notation showing that said record is now in possession of said Court.

2. The order of the Honorable Chief Justice of the Court of Civil Appeals denying appellant's petition for appeal to the Supreme Court of the United States, such order being filed in said Court January 7, 1937.

3. This præcipe, and acknowledgment of service thereof by appellees' counsel, with date of filing endorsed thereon.

[fol. 882] G

1. The entries upon the docket of the Court of Civil Appeals showing the date of filing appellant's petition for appeal to the Supreme Court of the United States, and the date of filing all other papers which have been lodged with the Court of Civil Appeals in connection therewith.

2. The original of appellant's petition for appeal, assignment of errors and prayer for reversal and statement as to jurisdiction, each dated January 15, 1937; the original of the order allowing appeal and the citation, each signed by Mr. Justice Cardozo under date of January 16, 1937; the original of appellant's cost bond; the original of the notice and statement required by par. 2, Rule 12 of the Rules of the Supreme Court of the United States, together with acknowledgment of service upon appellees' counsel of said petition, assignment, prayer, jurisdictional statement, order, notice and statement, and citation.

3. The original of any statement or motion filed by appellees in connection with this appeal, with dates of filing endorsed thereon.

[fols. 883-884] 5. Your separate certificate as to the papers designated by this section G of this præcipe, and in addition thereto, your general certificate as to the papers designated by the entire præcipe.

Dated 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fol. 885] [File endorsement omitted]

[fol. 886] In Supreme Court of the United States

[Title omitted]

Acknowledgment of Service—Filed February 1, 1937

To Alfred M. Scott, Assistant Attorney General of Texas; Edward H. Lange, Counsel for Appellees:

Pursuant to Rule 10, paragraph 2, of the Rules of the Supreme Court of the United States, you are hereby served with one copy for each of you of appellant's præcipe to the

Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas and to the Clerk of the Supreme Court of Texas, designating portions of the record to be [fol. 887] incorporated in the transcript to be made and certified to the Supreme Court of the United States in this appeal.

Your attention is specifically directed to appellant's assignment of errors and statement as to jurisdiction, wherein appellant has asserted, and will contend upon this appeal (1) that all the evidence in the record most favorable to the order shows that, upon the Commission's findings as to rate base and depreciation reserve allowance, both the 75 cent and 55 cent rates were confiscatory from and after January 1, 1932; (2) that the finding by the Court of Civil Appeals of a net return under the Commission's order of more than 7 per cent of $700,000 for 1933 is contrary to the undisputed evidence in the record; and (3) that there is no competent evidence in the record to support the elimination of the so-called questionable items of operating expense for the four fiscal years ended July 1932. Appellant's counsel have designated the parts of the record which they believe will constitute affirmative support for these claims. This is for your information when you prepare your præcipe.

Dated 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fols. 888-889] Service of a copy of this notice and of a copy of each of the præcipes stated therein is acknowledged.

This 1st day of February, 1937.

Alfred M. Scott, Asst. Atty. Gen.; Edw. H. Lange, Counsel for Appellees.

[fol. 890] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, do hereby certify that the following documents, appearing on pages 891 to 1059, hereof:

1. Petition for appeal, assignment of errors and prayer for reversal,

2. Statement as to jurisdiction,
3. Order allowing appeal,
4. Citation,
5. Notice required under Rule 12,
6. Acknowledgment of service of notice,
7. Acknowledgment of service of citation,
8. Appellant's cost bond,

are the originals filed in this Court by appellant, in Cause No. 8176, styled United Gas Public Service Company, Appellant, vs. The State of Texas, et al., Appellees.

To certify which, Witness my hand and seal of said Court at office in Austin, Texas, this 27th day of February, A. D. 1937.

R. E. Moore, Clerk. (Seal Court of Civil Appeals of the State of Texas.)

[fols. 891-893] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed January 20, 1937

Submitted in Connection with Allowance of Appeal—Benjamin N. Cardozo

[fol. 894] PETITION FOR APPEAL

Considering itself aggrieved by the final judgment in the above entitled cause, entered on October 30, 1935 by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein the Supreme Court of Texas, on October 6, 1936, denied appellant's petition for a writ of error and, on December 30, 1936 overruled appellant's motion for rehearing thereon, and wherein the Chief Justice of said Court of Civil Appeals, on January 7, 1937, declined to allow an appeal to the Supreme Court of the United States, United Gas Public Service Company, appellant in said Court of Civil Appeals, plaintiff-in-error in seeking review by the Supreme Court of Texas, and now appellant in this appeal from said judgment, prays that an appeal

may be allowed to the Supreme Court of the United States herein for the reasons specified in the Assignment of Errors hereinafter set out and for an order fixing the amount of the bond thereon.

The case is one in which the validity of an order of the Railroad Commission of Texas, requiring reduction of, and refund of collections at, the higher existing rates for natural gas utility service in the City of Laredo, Texas, has [fol. 895] been upheld against appellant's claim that such order is void, because the order is confiscatory in its actual operation and effect, and because it was arbitrarily made and upheld, in violation of appellant's rights secured by the due process and equal protection clauses of section 1 of the Fourteenth Amendment to the Constitution of the United States. A succinct statement of the case is as follows:

Appellant and its predecessor companies have served natural gas in Laredo for many years, owning and operating the field gathering lines and the transmission lines, as well as the city distribution mains and other equipment, used for that purpose. On December 15, 1931, the governing body of the City of Laredo, Texas, the agency having original jurisdiction over appellant's charges for gas service within that city, enacted an ordinance reducing the existing domestic gas rate in Laredo from seventy-five cents to forty cents per thousand cubic feet, the reduction to become effective January 1, 1932.[1] Prior to January 1, 1932, [fol. 896] appellant took an appeal from said ordinance to the Railroad Commission of Texas, and the Commission suspended the ordinance pending the determination of the appeal. The appeal was heard de novo by the Commission in the fall of 1932, the hearing being likewise for the purpose of determining another appeal which appellant had taken to the Commission from the refusal of Laredo to grant an increase in the existing 75 cent rate.

On June 13, 1933, the Commission entered the order here in question, which order prescribed a new rate of 55 cents per thousand cubic feet, 10 per cent penalty for nonpayment of bills within 10 days, minimum monthly bill

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[1] Both the 75 cent and the proposed 40 cent schedule provided 10 per cent discount for payment of bills within 10 days, and a minimum bill of $1.00.

of $1.00, and made the new rate retroactive, by requiring that all collections since January 1, 1932, in excess of said 55 cent rate, be refunded. Appellant having first filed in the United States District Court a bill in equity to enjoin enforcement of said order as confiscatory, appellees[1] filed this enforcement suit in the district court of Travis County, Texas,[2] alleging it to be one purpose of the en- [fol. 897] forcement suit to stay further proceedings in the federal court, and to secure a determination of the validity of the order in the courts of the state, pursuant to the procedure provided in sec. 380, Title 28, U. S. C. (Sec. 266, Judicial Code, as amended). Appellees, having obtained an order from the state district court staying them from enforcing the Commission's said rate order, then sought and obtained a stay of further proceedings in the federal court.

The case went to trial March 5, 1934, before a jury demanded by appellees, and upon appellees' original petition and appellant's first amended answer. In such answer appellant averred that the order was confiscatory, and hence void, because violative of the due process and equal protection clauses of sec. 1 of the Fourteenth Amendment to the Federal Constitution, in that its enforcement would leave about one per cent net return for 1932 and no return for 1933, upon the rate base ($885,000.00) and the depreciation reserve accrual (3 per cent of $885,000.00) found and used by the Commission in making the order. Appellant averred that the rate base and depreciation reserve accrual so used by the Commission had been arbitrarily fixed and were grossly inadequate, and that upon the fair value of $1,225,000.00 claimed by appellant, enforcement of the [fol. 898] order would leave nothing for return, both for 1932 and 1933. Appellant further averred that the Commission's use of average net revenues for a prior four year period—July 1928-July 1932—in making the order was arbitrary, in that these average revenues contained

[1] The real appellees (plaintiffs below) are the members of the Railroad Commission and the City of Laredo and its officials. The State of Texas, its Governor and Attorney General were also joined as plaintiffs.

[2] The district court of Travis County, Texas is a state court of general jurisdiction.

very substantial earnings which were non-recurring both within the period regulated by the order and for the future, in that such averages reflected conditions greatly different from those to which the order actually applied, and in that the Commission had used average revenues for a four year period commencing July 1928, in combination with a rate base fixed at the depression prices of 1932, to make the order. Appellant averred that at the time of the Commission hearing, the existing 75 cent rate was producing less than a reasonable return, and that for both 1932 and 1933, such higher rate was itself confiscatory, it yielding, even upon the rate base and depreciation accrual found by the Commission less than 3½ per cent for return in 1932 and 1933.

Judgment was entered by the trial court on April 24, 1934, denying enforcement of the order for any period prior to the date of said judgment, but permanently enjoining appellant to compliance with the order from and [fol. 899] after the date of the judgment, and until the order was modified or set aside by the state regulatory authorities. From this judgment, appellant appealed to the proper Court of Civil Appeals, an intermediate appellate court of the state, assigning as error the denial of appellant's motions for verdict and judgment below, upon the ground that all of the evidence, including the testimony most favorable to appellees, showed the order confiscatory in actual operation and hence violative of the due process and equal protection clauses contained in the Fourteenth Amendment to the Federal Constitution, such testimony showing without dispute that from the order's effective date to the time of trial, the 75 cent rate had yielded substantially less than the net return of 7 per cent of $885,000.00 the Commission had found appellant entitled to receive, and that the enforcement of said 55 cent rate from January 1, 1932 would clearly result in denial of just compensation. By related assignments, appellant sought reversal of the judgment upon the ground that the undisputed evidence showed that the order was made and the 55 cent rate was fixed upon the assumption that appellant's revenues under the 75 cent rate, from and after January 1, 1932, were equal to the average of such revenues for the [fol. 900] four year period July 1928-July 1932, and that such assumption was contrary to the facts. Appellant assigned error to the refusal of the trial court to so submit

the case to the jury as to permit fact findings as to property value and depreciation reserve accrual from the conflicting evidence thereon; and, by other appropriate assignments, appellant raised the question that the trial below—at which all findings as to property value and depreciation accrual had been refused, and at which the only verdict the lower court permitted to be returned and which was returned by the jury was its general finding that the order was not unjust and unreasonable to appellant—denied appellant a trial in accordance with due process and denied a record adequate for appellate review upon the issue of confiscation.

The Court of Civil Appeals, by its judgment entered October 30, 1935 (from which judgment this appeal is taken), reformed the judgment below so to enforce the order from its effective date (January 1, 1932), and, as so reformed, affirmed the judgment below. This judgment appellant attacked, first by motion for rehearing in the Court of Civil Appeals, and then by petition for writ of [fol. 901] error seeking a discretionary review thereof by the Supreme Court of Texas and by motion for rehearing in that court, both said motions being overruled and said petition being denied, all without opinion, the only opinion in the case by any court being that of the Court of Civil Appeals entered October 30, 1935. The judgment of the Court of Civil Appeals was based upon its broad holding that the evidence adduced at the trial below was insufficient, as a matter law, to raise an issue of confiscation. The denial of fact findings in the court below was not considered, the assignments thereon being treated by the state appellate court as presenting mere questions of practice, and as being controlled by the first holding that the evidence was insufficient to raise an issue of confiscation.

By the above described motions and petition, appellant raised and reserved the questions as to the invalidity of the order under the due process and equal protection clauses of section 1 of the Fourteenth Amendment to the Constitution of the United States which are presented by appellant's Assignment of Errors in this appeal. These questions have arisen in a suit in which there has been [fol. 902] drawn in question an act of the State of Texas, legislative in character, upon the ground that the same is repugnant to the last mentioned portions of the Federal Constitution, and in which the decision of the highest court

of the state in which a decision in the suit could be had has been in favor of the validity thereof.

Appellant, United Gas Public Service Company, desires that, pending the final determination of said appeal by the Supreme Court of the United States, the enforcement of the assailed order be enjoined and that said judgment shall be superseded and execution thereof stayed. By application separate from this petition, appellant will present the facts in respect of the security now given for the faithful performance of said judgment if the same be against appellant, and will set out the nature of the injunction, supersedeas and stay sought.

Assignment of Errors

Said appellant, United Gas Public Service Company, assigns the following errors in the record and proceedings of this case:

1. The Court of Civil Appeals erred in refusing to hold said order confiscatory upon the evidence of its actual [fol. 903] operation from its effective date (January 1, 1932), the record made at the trial (March, 1934) showing, when only that testimony most favorable to the order is considered, that its enforcement will limit appellant to a net return of 1-1/10 per cent for 1932, and to a net return of 2-1/10 per cent for 1933, when computed upon the rate base ($885,000 fixed as of August, 1932) and after providing the accrual to depreciation reserve (3 per cent per annum of $885,000), which were found and entered by the Commission as part of said order.

2. The Court of Civil Appeals erred in treating the presumption in favor of the validity of the Commission's order as irrebuttable by the undisputed evidence showing that, upon the Commission's own findings of property value and depreciation accrual, the enforcement of the order will clearly deny appellant just compensation for the use of its property during the two years between the effective date of the order and the time of trial.

3. The Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the rate base ($885,-

[fol. 904] 000) used by the Commission in making said order was an arbitrary and unlawful understatement of the fair value of appellant's property used and useful to furnish gas service for Laredo.

4. Similarly, the Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the figure for depreciation reserve accrual (3 per cent of $885,000) used by the Commission in making said order was grossly and unlawfully inadequate.

5. The Court of Civil Appeals erred in holding that the evidence was insufficient, as a matter of law, to show that the Commission's order was confiscatory, because such holding was made, in so far as it was based upon evidence, upon consideration of only certain portions of the testimony offered by appellees, and not by considering, weighing and passing upon, in the exercise of independent judgment as to facts and law, all of the facts pertinent to confiscation established by competent evidence.

6. The Court of Civil Appeals erred in concluding that the enforcement of the order for 1933 would leave appellant [fol. 905] a net return of more than 7 per cent of $700,000, such conclusion being contrary to all the evidence and wholly unsupported by any evidence in the record.

7. The Court of Civil Appeals erred in giving controlling effect to calculations—first made in the Court of Civil Appeals—purporting to show an average of gross revenues, operating expenses, and net revenues at the 75 cent rate for a period of four prior fiscal years (July 1928-July 1932), and in using such average for the purpose of predicting the effect of said final order upon appellant's revenues subject to regulation thereby, all the evidence at the trial showing that the application of said order to appellant's actual operations since January 1, 1932 will clearly result in confiscation of appellant's property, and all of the evidence further showing that the conditions affecting appellant's business during the four prior years used for said averages were greatly different from such conditions prevailing at and after the order is made effective.

8. The Court of Civil Appeals erred, in connection with such calculations, in arbitrarily eliminating therefrom large outlays for operating expenses actually and in good faith incurred in said four prior fiscal years, without any com- [fol. 906] petent evidence in the record to support such elimination.

9. The Court of Civil Appeals erred in computing appellant's supposed rate of return, both for 1933 and as represented by such average revenue calculations, upon a figure of $700,000 for rate base, such $700,000 figure representing the lowest valuation estimated by any witness at the trial and being offered by an engineer witness for appellees as showing estimated reproduction cost, less depreciation, at the end of 1933, the court erroneously refusing to decide confiscation from a judicial determination of fair value made in the exercise of independent judgment applied to all competent evidence thereof.

10. The Court of Civil Appeals erred in holding that, appellant not having put the 55 cent rate to a test, the evidence was insufficient to show confiscation, despite the fact that the record herein shows without dispute that the 75 cent rate was itself confiscatory, it yielding, upon the testimony most favorable to the order and upon the $885,000 rate base and 3 per cent depreciation reserve accrual found by the Commission, a net return of only 3-6/10 per cent for 1932 and of only 4-4/10 per cent for 1933, and despite the [fol. 907] showing in the record that a test of said 55 cent rate, in the usual meaning of that term, was rendered impossible by the retroactive operation of the rate order and by the stay order entered in this suit at the instance of appellees.

11. The Court of Civil Appeals erred in enforcing the retroactive refund provisions of the order in respect of appellant's completed operations of 1932 and 1933, without findings of fact—and without competent evidence as the basis for findings such as would support such action, if any findings were made—upon fair value, reasonable rates of return and depreciation reserve accrual, and net earnings before and after the enforcement of the order for said years.

12. The Court of Civil Appeals erred in failing and refusing to give appellant that independent consideration of both the facts and the law which is essential to a proper judicial

review of a rate order claimed to be confiscatory, if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

13. And the said Court of Civil Appeals erred in refus- [fols. 908-1025] ing to hold said order void upon the evidence of its actual operation and effect presented in this case, which evidence showed without dispute that enforcement of the order will take appellant's property without due process of law, compell the use thereof without just compensation and deny appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Because of these errors, said order and judgment will deprive appellant of just compensation for the use of its property, will take the use thereof without due process of law, and will deny appellant the equal protection of the laws, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors appellant, United Gas Public Service Company, prays that said judgment entered in the above entitled cause by said Court of Civil Appeals on October 30, 1935 be reversed, and that a judgment be rendered in favor of appellant and for costs.

Dated this the 15th day of January, 1937.

John P. Bullington, F. G. Coates, Counsel for Appellant, United Gas Public Service Company.

[fols. 1026-1027] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL AND FIXING SECURITY FOR COSTS— Filed January 20, 1937

[fol. 1028] United Gas Public Service Company, appellant in the above entitled cause, having prayed for the allowance

of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, on October 30, 1935, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Court of Civil Appeals for the Third Supreme Judicial District of Texas in the above entitled cause, as provided by law, and it is further ordered that the clerk of said Court of Civil Appeals shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days from this date; and

[fols. 1029-1030] It is Further Ordered that security for costs on appeal be fixed in the sum of five hundred dollars.

Dated this 16th day of January, 1937.

Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States.

[fols. 1031-1053] Citation, in usual form, showing service on Alfred M. Scott et al., filed January 20, 1937, omitted in printing.

[fols. 1054-1059] Bond on appeal for $500.00, approved and filed January 22, 1937, omitted in printing.

[fol. 1060] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, hereby certify that the above pps. 1-791 are true and correct copies and statements from the record on appeal in said Court in cause No. 8176, styled United Gas Public Service Company, Appellant v. The State of Texas, et al., Appellees. I further

certify that the above pages 1-791 are a part of a transcript of record consisting of 1059 pages, designated as volumes 1, 2, 3 & 4; that pages 792-828 in volume 3 were delivered to me by S. A. Philquist, Clerk of the Supreme Court of Texas; and that said 1059 pages contain all matter designated in the præcipe filed with me as Clerk of said Court by said appellant, and that all omissions from said transcript of parts of the record now on file in this Court were made as set out in said præcipe. I further certify that pages 891-[fol. 1061] 1059 of this transcript consist of original documents filed with me by appellant and appellees in connection with the appeal of this cause to the Supreme Court of the United States.

In Witness Whereof, witness my hand and the seal of said Court of Civil Appeals this 27th day of Feby., 1937.

R. E. Moore, Clerk. (Seal.)

[fol. 1062] In Supreme Court of the United States

Appellees' Cross-Assignments of Error

Cross-Assignment of Error No. 1

The Court erred in refusing to permit appellees to introduce in evidence the appeal bond filed by appellant when it perfected its appeal with the Railroad Commission, because such appeal bond was both relevant and material, particularly in connection with that portion of the order of the Commission dated June 13, 1933, making such order effective as of January 1, 1932.

Cross-Assignment of Error No. 2

The Court erred in entering that portion of its judgment declaring invalid the provision in the order of the Commission of June 13, 1933, making such order effective as of January 1, 1932, because appellant when it perfected its appeal from the city ordinance to the Railroad Commission, posted its bond to suspend the provisions of the ordinance, pending such appeal.

Cross-Assignment of Error No. 3

The Court erred in entering that portion of its judgment declaring invalid the provision in the order of June 13, 1933, requiring a refund of the difference between the amounts col-

lected by appellant under the seventy-five cent rate, and [fol. 1063] the amounts that would have been due under the fifty-five cent rate, because appellant, when it perfected its appeal from the ordinance to the Railroad Commission posted its bond which was conditioned to provide for such refund.

[fol. 1064] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

NOTICE AS TO TRANSCRIPT, ETC.

To Alfred M. Scott, Assistant Attorney General of Texas; Edw. H. Lange, Counsel for Appellees:

You are hereby notified:

(1) That appellant's counsel has requested the Clerk of the Court of Civil Appeals, Third District, to do the following in making the transcript of record called for by appellant's præcipe of January 30, 1937:

[fol. 1065] Section of Præcipe:

B 4 (i). Include all p. 66, S. F. Vol. I.

B 9 (c). Include first question and answer on p. 522, S. F. Vol. I.

B 16 (f). Include third question and answer on p. 945, S. F. Vol. II.

B 17 (c). From S. F. Vol. II, include remainder p. 1247, and p. 1248, down to last question; p. 1255 include first three questions and answers.

B 21 (b). Include last question and answer on p. 1646, S. F. Vol. II.

C 11. Exclude par. 171, and include par. 238.

D 5. Include pars. 27 and 140.

(2) That appellant's counsel will request the Clerk of the Supreme Court of the United States, before printing page 27 of appellant's Statement as to Jurisdiction, to change the reference to paragraphs 33, 34, motion for rehearing, C. C. A., so as to read paragraph 35 of said motion.

Dated this 15th day of February, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

Service of the above notice hereby acknowledged.

Signature: Alfred M. Scott, Edw. H. Lange, Counsel for Appellees.

Date Feb. 17, 1937.

[fol. 1066] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ENLARGING TIME FOR APPELLEES' FILING OF PRÆCIPE FOR CONTENTS OF RECORD—Filed February 5, 1937

This fifth day of February, 1937, good cause for this order having been shown by Appellees, it is ordered that Appellees be and they are hereby granted an enlargement of ten days of the original ten day period allowed them by Section 2 of Rule 10 of the Supreme Court of the United States within which to file with the Clerk of the Court of Civil Appeals their præcipe indicating the additional portion of the record desired by appellees to be included in the transcript.

James W. McClendon, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas. ——, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 1067] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ENLARGING TIME FOR APPELLEES' FILING OF PRÆCIPE FOR CONTENTS OF RECORD—Filed February 17, 1937

This 11th day of February, 1937, good cause for this order having been shown by Appellees, it is ordered that Appellees be and they are hereby granted an enlargement of 20 days from and after this date, under Section 2 of Rule 10 of the Supreme Court of the United States, within which to file with the Clerk of the Court of Civil Appeals their præcipe indicating the additional portions of the record desired by appellees to be included in the transcript.

Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 1068] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEES' COUNTER PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 2, 1937

To the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

You are hereby requested to include in the transcript of record to be filed in the Supreme Court of the United States pursuant to an order of appeal allowed on January 16, 1937, in the above entitled cause by Mr. Justice Cardozo, the following portions taken from the record on file in this cause:

[fol. 1069] A

From the Transcript certified on June 20, 1934 by George H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in Cause No. 52,774 on the docket of the Fifty-third District Court of Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, the following:

	Page of Transcript
1. Caption (entire page)	1
2. From the ordinance of the City of Laredo dated December 15, 1931, and effective January 1, 1932, which is attached to plaintiffs' original petition as "Exhibit A", the following:	
(a) Begin with the paragraph on page 13, "whereas, about the year 1921" and continue to the beginning of the ordaining clause on page 14	13-14
3. All of plaintiffs' First Supplemental Petition (omitting caption), beginning with paragraph V on page 81, and continuing through page 89	81-89
4. All of the trial court's order on demurrers and exceptions	96-97

Page of Transcript

5. All of Motion of Defendant to Discharge Jury 98, 99, 100
6. Plaintiffs' Motion for Peremptory Instruction and order overruling the same 111-112

[fol. 1070]

7. Plaintiffs' Motion for Peremptory Instruction and order Overruling the same 112A, 112B, 112C
8. Paragraph 1 of Defendants' Motion for Judgment "Non Obstante Verdicto" 234
9. Plaintiffs' Motion for Judgment and Order Overruling the same 242-243
10. Plaintiffs' Motion for Judgment on the Verdict, and Order Granting said Motion 244
11. Plaintiffs' Bill of Exception No. 1, and Order Allowing the Same 403-405
12. Motion of Defendant for Original of Defendants' Exhibit No. 13 to be sent to Appellate Court 407-410
13. That portion of the order of the trial court on the same Motion, beginning with the paragraph at the bottom of page 411, "It is therefore ordered," to "to-wit" at the bottom of the said page; (and add the following notation: Here follow exhibits itemized as in the herein-above Motion and Order signed by the District Judge and filed May 4, 1934) 411
14. That portion of appeal bond, from District Court to Court of Civil Appeals, beginning at top of page 242 and continuing through, "Judge, 53rd District Court, Travis County, Texas" 442-443
15. From the Original Brief of Appellees filed in Cause No. 8176, in the Court of Civil Appeals, the following numbered cross-assignments of error:

    Appellees' Cross-assignments of Error Numbers 1 to 3, inclusive (Page 103 of Appellees' Brief).

16. (This) Appellees' Counter Præcipe, and the Order Enlarging the time for the filing thereof.

[fol. 1071] B

From the Statement of Facts setting forth the testimony given and the exhibits offered and received in evidence at the trial of said Cause No. 52,744 in the 53rd District Court of Travis County, Texas, such Statement of Facts consisting of nine separately bound volumes, the first four volumes numbered I, II, III and IV, and the last five volumes designated A, B, C, D and E, which Statement of Facts was filed, after final approval, by Geo. H. Templin, District Clerk, on the 8th day of June, 1934, and was filed in this Court of Civil Appeals on the 21st day of June, 1934, the following, and in the following order:

NOTE.—In making this portion of the Transcript, please omit all unnecessary matter, including all objections to testimony, all comments and arguments on such objections, all rulings thereon and all the exceptions taken to such rulings. At the point of each such omission, write "Plaintiffs' (defendant's) objection overruled," where the objection was overruled and exception taken, or write "Objection made, sustained, and offer of proof made by plaintiffs (defendant)," where the objection was sustained, and offer of proof made. Please omit repetition of questions or answers where the record shows that the repetition was because the witness or the court did not understand the question, or counsel or the court did not understand the answer, also unanswered questions and like matter. Please [fol. 1072] confine the portions of the record on pages designated, to the questions and answers directly bearing upon the particular ultimate fact about which the witness is testifying.)

Plaintiffs' Testimony

1. Order of the United States District Court remanding the cause to the 53rd Judicial District Court of Travis County, Texas. (S. F. Volume III, pages 1765 to 1767.)

2. From the testimony of C. F. Petet, a witness for plaintiffs, the following, from S. F. Volume I:

(a) Beginning at p. 11, and continuing through "plaintiff rests" on p. 14;

(b) Beginning at page 753 and continuing through p. 756.

Defendant's (Gas Company) Testimony)

2-a. From the testimony of Henry Beck, a witness for defendant, gas company, the following, from S. F. Vol. I:

(a) Beginning with p. 15 and continuing through p. 21, including all colloquy, and statements of Court and Counsel:

3. From the testimony of H. E. Womack, a witness for defendant, the following, from S. F. Volume I:

(a) Cross-examination beginning with p. 135 and continuing through "Texas gas area" on p. 158;

(b) Cross-examination beginning at top of p. 180 and continuing through "Laredo is concerned" on p. 190;

(c) Re-Cross-examination beginning at top of p. 199 and continuing through "company's records" on p. 207; and beginning on p. 227 and continuing through "Yes, sir" at [fol. 1073] top of p. 236; and beginning with "now referring" on page 250 and continuing through bottom of page 252; and beginning at top of page 255 and continuing through "37" on p. 256; and beginning with "Now, Mr. Womack" on p. 257 and continuing through "just who does" at top of p. 261; and beginning with "Q. Going back a moment" on p. 263 and continuing through "would be" on p. 277; and beginning with "Mr. Womack" on p. 289 and continuing through "a wild guess" on p. 293.

(d) Cross-examination beginning on p. 1588 and continuing through "figures with them" on p. 1595 (From S. F. Vol. II).

(e) From defendant's Exhibit 2 (S. F. Vol. IV), p. 2013.

4. From the testimony of E. B. Neiswanger, a witness for defendant, gas company (From S. F. Volume I):

(a) Cross-interrogatory number 5, and the answer thereto, p. 108;

(b) Cross-interrogatory number 6, and the answer thereto, pp. 108-109.

5. From the testimony of H. E. Randall, a witness for defendant, (From S. F. Volume I):

(Cross-examination)

(a) Beginning on p. 117 and continuing through "correct" on p. 128; and beginning on bottom of p. 131 and continuing through to bottom of p. 132.

[fol. 1074] 6. From the testimony of W. W. Stein, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with first question on p. 350, and continuing through p. 417;

(b) Beginning on p. 757 and continuing through p. 770; (From S. F. Volume II).

(c) Beginning on p. 1530 and continuing through p. 1534.

7. The following portions of Exhibits:

(a) From plaintiffs' Exhibit 10 (S. F. Volume III) pp. 1973 through 1977;

(b) From plaintiffs' Exhibit 11 (S. F. Volume III) pp. 1978 through 1981.

8. From the testimony of M. A. Abernathy, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the last question on p. 451 and continuing through p. 483.

9. The following portions of Exhibit:

(a) From defendant's Exhibit No. 8 (S. F. Volume IV) pp. 2128 through 2138.

[fol. 1075] 10. From the testimony of A. D. Greene, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the first question on p. 632 and continuing through "no, sir" on p. 663; beginning with the last question on p. 643 and continuing through "that is right, yes, sir" on p. 656; beginning at page 718 and continuing through the last answer on p. 723, including colloquy on pp. 719 and 720;

(From S. F. Vol. II:)

(b) Beginning at p. 1522 and continuing through "Laredo" on p. 1526.

11. From the testimony of P. McDonald Biddison, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the first question on p. 579 and continuing through "purposes" on p. 581; and beginning with "I have no information" on p. 598 and continuing through "properties" on p. 607; and beginning at bottom of p. 618 and continuing through "small" on p. 626; and beginning at p. 745 and continuing through p. 752.

[fol. 1076] 12. From the testimony of H. L. Dickerson, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning at p. 689 and continuing through "around 20¢" on p. 711; and beginning at p. 713 and continuing through "mine" on p. 715; and beginning with second question on p. 717 and continuing through the answer at top of p. 718.

13. From the defendant's Exhibit 13, consisting of S. F. Volumes A, B, C, D, and E, being the record of the proceedings had before the Railroad Commission of Texas, plaintiffs designate the following portions of such Exhibit:

(a) From the testimony of A. D. Greene, a witness for defendant, gas company, from S. F. Volume A:

(Cross-examination)

1. Beginning with the first question on p. 187 and continuing through "That is correct" on p. 209, including comment by Commissioner Thompson.

2. Beginning with "Now, the item" on p. 224 and continuing through "$1,240,655" on the same page.

(b) From the testimony of P. McDonald Biddison, a witness for defendant, from Volume A:

[fol. 1077] (Cross-examination)

1. Beginning with the second question on p. 302 and continuing through the last answer on p. 304; and beginning with "Dealing now" on p. 358 and continuing through "reasonable worth" on p. 367; and beginning with the second last question on p. 372 and continuing through "property" at the top of p. 376.

(c) From the testimony of H. E. Womack, a witness for defendant, from Volume B:

1. Beginning at p. 1750 and continuing through "that time" at the bottom of page 1752, including all comment and colloquy.

(d) From the testimony of J. V. Strange, witness for defendant, from Volume A:

(Cross-examination)

1. Beginning with "Q. What was the purpose" on p. 581, and the answer thereto on the same page.

2. Beginning at top of p. 593 and continuing through p. 598; and beginning with the question "Mr. Strange, in connection" on p. 603 and continuing through the middle of p. 612.

(e) From the testimony of W. W. Stein, a witness for defendant, from Volume B:

1. Beginning with the first question on p. 1601 and con-
[fol. 1078] tinuing through the last answer on p. 1603; and beginning with the last question on p. 1692 and continuing through "Moody-Seagraves interests" on p. 1695; and beginning with the last question on p. 1699 and continuing through "I suppose" on p. 1700; and beginning with "Now, you testified" on p. 1704 and continuing through "I never asked him" on p. 1709; and beginning with the last question on p. 1714 and continuing through the last answer on p. 1716.

(f) From the testimony of H. E. Elrod, a witness for plaintiffs, from Volume B:

1. Beginning with the first question on p. 1019 and continuing through "I have" at the top of p. 1026; and beginning with "Will the reporter please" on p. 1028 and continuing through "Laredo" at top of p. 1032; and beginning with "Commissioner Thompson" at bottom of p. 1050 and continuing through "Oh, yes" on page 1051; and beginning with "Now turning back" on page 1118 and continuing through "Yes" on p. 1129; and beginning with "turning back" on p. 1131 and continuing through "been made" at bottom of p. 1138.

[fol. 1079] 2. Beginning with cross-examination on p. 1139 and continuing through "market prices" on p. 1141;

and beginning with the second question from the bottom on p. 1198 and continuing through "that is it" on page 1202; and beginning with the last question on p. 1207 and continuing through the bottom of p. 1210; and beginning with the last question on p. 1353 and continuing through "at this time" on p. 1355, including statements by the Commissioner; and beginning with the second question on p. 1377 and continuing through "to serve Laredo" on the same page; and beginning with "Commissioner Thompson: Do you know" on p. 1380 and continuing through "Yes" at bottom of p. 1384.

3. Beginning with "Mr. Coates—why not let the record show" on p. 1683 and continuing through "he would testify" on the same page.

4. Beginning with "He (Mr. Elrod) was going to" on p. 1684 and continuing through "competency" on p. 1685.

(g) From the testimony of J. D. Shaw, a witness for plaintiffs, from S. F. Volume B:

1. Beginning at top of p. 1154 and continuing through "yes" at the bottom of p. 1161; and beginning *and beginning* [fol. 1080] with the second question on p. 1173 and continuing through "before very long" on p. 1174.

(h) From the testimony of John P. Kinney, a witness for plaintiffs, from S. F. Volume B:

1. Beginning with the first question on p. 1299 and continuing through "$166,996.68" on p. 1305; and beginning with the last question on p. 1314 and continuing through the first answer on p. 1316; and beginning with the second question on p. 1332 and continuing through "dividend entries" on p. 1333.

(i) From the testimony of A. J. Neff, witness for plaintiffs, from S. F. Volume B:

1. Beginning with "State your name" on p. 1405 and continuing through "A. Yes" at the middle of p. 1410.

2. Include Exhibit J (Volume E), pp. 2466 to 2472, inclusive.

(j) From the testimony of Leon O. Lewis, a witness for plaintiffs, from S. F. Volume B:

1. Beginning with "State your name" on p. 1460 and continuing through "it is" on p. 1464; and beginning with "Mr.

Lewis" on p. 1475 and continuing through "July 31, 1932" on p. 1482; and beginning with "Now" on p. 1487 and continuing through "basis of revenue" on p. 1500; and be-
[fol. 1081] ginning with (cross-examination) "Mr. Lewis" on p. 1508 and continuing through "theory" on p. 1510; and beginning with "I have attempted" on p. 1535 and continuing through "all of them" on p. 1571; and beginning with "Now, in connection" on p. 1580 and continuing through "examination" at top of p. 1586, including statements of counsel and of the Commissioner;

2. Beginning with last question on p. 1589 (re-direct examination) and continuing through "could find" on p. 1591; and beginning with "Turning to p. 11 of Exh. L," on p. 1592 and continuing through "That is right" on p. 1597; and beginning with "What was the rate" on p. 1597 and continuing through "three-fourths per cent" on p. 1598.

(k) From the testimony of M. A. Abernathy, a witness for defendant, from S. F. Volume B:

1. Beginning with (cross-examination) "Were you paying" on p. 1747 and continuing through the answer on the same page.

(l) Include the following exhibits or portions thereof:

1. Defendant's Exhibit 3 (Volume C), pp. 2071-2080;

2. From defendant's Exhibit 5 (Volume C), pp. 2110, 2111, and 2112;

[fol. 1082] 3. From defendant's Exhibit No. 6 (Volume C), p. 2120;

4. From defendant's Exhibit No. 7 (Volume C), pp. 2122 to 2125, inclusive;

5. From defendant's Exhibit No. 8 (Volume C), pp. 2126 and 2127, and Paragraph II on p. 2128; also Paragraph VI on pp. 2131 and 2132, and Paragraph XI on pp. 2135 to 2136;

6. Defendant's Exhibit No. 10 (Vol. C), pp. 2148 to 2155, inclusive;

7. From plaintiffs' Exh. A (Vol. D), pp. 2168, 2171, 2196, 2297, 2417 (Note: Indicate the remaining pages omitted, which consist of detailed inventory sheets, showing each item of property and its appraised value);

8. Plaintiffs' Exhibit E (Volume D), p. 2434;

9. Plaintiffs' Exhibit F (Volume D), p. 2436;

10. Plaintiffs' Exhibit G (Volume D), pp. 2438 to 2440, inclusive;

11. Plaintiffs' Exhibit H (Volume D), pp. 2443 to 2447, inclusive:

12. Plaintiffs' Exhibit L (Volume D), pp. 2450 to 2461, inclusive.

Plaintiffs' Rebuttal Testimony

14. From the testimony of Leon O. Lewis, a witness for plaintiffs, from S. F. Volume I:

(a) Beginning at p. 771 and continuing through p. 793; and beginning with the first question on p. 796 and con-
[fol. 1083] tinuing through "1774" on p. 797, including all objections and statements of counsel; and beginning with the fourth question on p. 810 and continuing through "line" on p. 831; and beginning with "Mr. Lewis" on p. 833 and continuing through "increased 31.22%" on p. 841;

(b) Include plaintiffs' Exhibit No. 4 (S. F. Volume III), pp. 1770 to 1772, inclusive;

(c) Include plaintiffs' Exhibit No. 5 (S. F. Volume III), pp. 1773 to 1777, inclusive;

(d) Include plaintiffs' Exhibit 8 (S. F. Volume III), pp. 1785 to 1797, inclusive;

(From S. F. Volume II:)

(e) Beginning at p. 851 and continuing through p. 879;

(Cross-examination)

(f) Beginning at p. 927 and continuing through first answer on p. 972; beginning with first question on p. 972 and continuing through "I wanted to know" on p. 1004; beginning with "all right" on p. 1004 and continuing through p. 1011, including all colloquy of counsel on p. 1011; beginning at top of p. 1012 and continuing through p. 1058;

(Re-direct Examination)

(g) Beginning at top of p. 1064 and continuing through p. 1080; beginning at the top of p. 1081 and continuing
[fol. 1084] through p. 1088, and including objections and remarks;

(Recross-examination)

(h) Beginning at the middle of p. 1088 and continuing through the middle of p. 1096;

(Redirect Examination)

(i) Beginning at top of p. 1535 and continuing through the middle of p. 1537;

(j) Include that portion of plaintiffs' Exhibit No. 13 (S. F. Volume III) comprising pp. 1987, 1988, and 1989, to and including the word "thereunder" in the middle of p. 1990, and insert at that point the following notation: "Here follows a detailed list of oil and gas leases comprising the company's production system properties"; then begin with "to have and to hold" in the middle of p. 1995 and continue through p. 1996, and add the following notation: "acknowledged in statutory form."

15. From the testimony of John P. Kinney, witness for plaintiffs, from S. F. Volume I:

(a) Beginning at p. 798 and continuing through "audit" on p. 816;

(From S. F. Vol. II:)

(Cross-examination)

(b) Beginning at p. 880 and continuing through "dollars" at the top of p. 884;

[fol. 1085] (Redirect Examination)

(c) Beginning at p. 911 and continuing through the bottom of p. 915; beginning at p. 921 and continuing through p. 925.

16. From the testimony of H. E. Elrod, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at p. 1096 and continuing through the middle of p. 1104;

(b) Include that portion of plaintiffs' Exhibit No. 9 (S. F. Vol. III) beginning with p. 1798 and continuing through 1972;

(c) Beginning at bottom of p. 1110 and continuing through p. 1199;

(Cross-examination)

(d) Beginning with the second question on p. 1219 and continuing through "soil" on p. 1256; beginning at top of p. 1363 and continuing through p. 1396; beginning at

top of p. 1397 and continuing through p. 1417; beginning at top of p. 1418 and continuing through 1422;

(Redirect Examination)

(e) Beginning at bottom of p. 1422 and continuing through p. 1433;

[fol. 1086] (Recross-examination)

(f) Beginning at top of p. 1434 and continuing through the first answer on p. 1451;

(Redirect Examination)

(g) Beginning at top of p. 1598 and continuing through p. 1603;

(Recross-examination)

(h) Beginning with "you make no" on p. 1606 and continuing through "I think so" on p. 1607.

17. From the testimony of Albert Martin, a witness for plaintiffs, from S. F. Vol. II:

(a) Beginning at the top of p. 1259 and continuing through "they do" on p. 1265; beginning at top of p. 1272 and continuing through p. 1279; beginning at top of p. 1475 and continuing through the middle of p. 1477;

(Cross-examination)

(b) Beginning at p. 1477 and continuing through the second answer on p. 1494.

18. From the testimony of J. O. Walker, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at p. 1282 and continuing through "Yes, sir" at top of p. 1285; Beginning with last question on p. 1291 and continuing through the last "Yes, sir" on p. 1294.

[fol. 1087] (Cross-examination)

(b) Beginning with the first question on p. 1296 and continuing through "the same roof" on p. 1300.

(Redirect Examination)

(c) Beginning at top of p. 1301 and continuing through "Laredo" on p. 1307;

Beginning with "you are acquainted" on p. 1309 and continuing through the second "yes" on p. 1310.

(Cross-examination)

(d) Beginning at top of p. 1311 and continuing through the middle of p. 1316.

19. From the testimony of Louis Hausmann, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at middle of p. 1317 and continuing through "Yes, sir" at top of p. 1324.

(Cross-examination)

(b) Beginning at top of p. 1324 and continuing to bottom of p. 1327.

(Recross-examination)

(c) Beginning at top of p. 1328 and continuing to bottom of said page.

(Recross-examination)

(d) Beginning at top of p. 1329 and continuing through last answer on p. 1331.

[fol. 1088] 20. From testimony of Jack Scales, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at bottom of p. 1342 and continuing through "about three years" at bottom of p. 1345.

(Cross-examination)

(b) Beginning at top of p. 1346 and continuing through "yes, sir" at bottom of said page.

(Redirect Examination)

(c) Entire page 1347.

21. From the testimony of H. M. Irvin, a witness for plaintiffs, S. F. Volume II:

(a) Beginning at bottom of p. 1352 and continuing through "Yes, sir" at top of p. 1355.

(Cross-examination)

(b) Beginning with "you have never" on p. 1355 and continuing through "Yes, sir" on p. 1357.

(Redirect Examination)

(c) Beginning with the first question on p. 1358, and continuing through the bottom of said page.

(Recross-examination)

(d) Beginning at top of p. 1359 and continuing through to bottom of p. 1360.

[fol. 1089] (Redirect Examination)

(e) Beginning with the first question on p. 1361 and continuing through "every day, yes, sir" on the same page.

22. From the testimony of R. H. Montgomery, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at top of p. 1496 and continuing through "price trends" on p. 1499.

(Cross-examination)

(b) Beginning at bottom of p. 1499 and continuing through "Yes" at top of p. 1502.

(Redirect Examination)

(c) Beginning with the next to the last question on p. 1499 and including the answer "it should increase" on p. 1503, and continuing from p. 1503 through, "any good or service", on p. 1505.

23. From the testimony of R. H. Hargrove, a witness for defendant, S. F. Volume II:

(Direct Examination by Plaintiffs)

(a) Begin at middle of page 1537 and continuing through "electric bond and share company" on p. 1538.

[fol. 1090] 24. From the testimony of Charles W. Fowler, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at top of p. 1616 and continuing through "it would" on p. 1621; Beginning with "now to get back" on p. 1628 and continuing through "it would" on the same

page; Beginning with the last question on p. 1632 and continuing through "I think so" on p. 1633.

24-a. Plaintiffs' Exhibits Nos. 10 and 11 (S. F. Vol. III, pp. 1974-1982).

Defendant's Surrebuttal Testimony

25. From the testimony of R. H. Hargrove, a witness for defendant, from S. F. Volume II:

(a) Beginning at top of p. 1658 and continuing through "it does" at p. 1661.

(Cross-examination)

(b) Beginning at bottom of p. 1661 and continuing through the last answer on p. 1664; beginning with "how many" on p. 1666 and continuing through the first answer on p. 1667.

26. From the testimony of J. V. Strange, a witness for defendant, from S. F. Volume II:

(a) All the testimony of this witness, beginning at p. 1542 and continuing through p. 1575.

[fol. 1091] 27. From the testimony of John S. Ivey, a witness for defendant, from S. F. Volume II:

(Cross-examination)

(a) Beginning at middle of p. 1647 and continuing through bottom of p. 1656.

(b) The last question and the answer thereto on p. 1657.

28. From the testimony of J. A. Phillips, a witness for defendant, from S. F. Volume II:

(a) All testimony of this witness, including all statements of counsel, as well as comments by the Court, beginning with "Mr. Phillips" and continuing on pp. 1688, through first answer on p. 1694.

(b) All questions and answers on cross examination appearing on p. 1715.

29. Appellant's "Notice and Acknowledgment of Service of Appellant's Præcipes for Record" filed on February 1, 1937, together with acknowledgment of service of said præcipes upon Appellees' counsel of same date.

30. Order of Mr. Associate Justice Benjamin N. Cardozo, of the United States Supreme Court, dated February 11, 1937, filed February 17, 1937, extending 20 days the period for Appellees' filing of their counter præcipe for contents of transcript.

31. Copy of this Appellees' Counter Præcipe for contents of the transcript, filed March 2, 1937.

Dated at Austin, Texas, this the 2nd day of March A. D. 1937.

Alfred M. Scott, Edw. H. Lange, Counsel for Appellees.

[fol. 1092] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD—Filed March 5, 1937

[fol. 1093] Whereas, on February 1, 1937, appellant United Gas Public Service Company obtained acknowledgment of service and filed its præcipe dated January 30, 1937, designating portions of the record to be typed and incorporated in a transcript of record to be certified by the Clerk of the Court of Civil Appeals to the Supreme Court of the United States, and said portions of the record so designated have been typed and certified by said Clerk, and

Whereas, appellees, having secured 20 days extension of time from February 11, 1937 for filing their counter præcipe, have duly filed said counter præcipe on March 2, 1937, and it appears to counsel that by far the greater part of the record in the state court has now been designated by the two præcipes, and

Whereas, the record in the state court is typewritten, considerable expense would be incurred in retyping those parts designated by counter præcipe, the Court of Civil Appeals has indicated its willingness to order that the original record be sent to the Clerk of the Supreme Court of the United States, provided said record is returned to said Court of Civil Appeals when this appeal is concluded, the [fol. 1094] time in which said record must be filed at Washington will expire March 12, 1937, and it is impossible for

the Clerk of the Court of Civil Appeals, with the forces he has available, to complete the typing of said record and have the same in Washington by March 12, 1937.

Therefore, it is stipulated:

1. That counsel for appellees will undertake to obtain an order from the Court of Civil Appeals allowing its Clerk to certify and send to the Clerk of the Supreme Court of the United States the original record, consisting of the Transcript and the nine volumes comprising the Statement of Facts.

2. That if said order is obtained, said order and the original record, as above described, together with the transcript already made and certified by the Clerk of the Court of Civil Appeals pursuant to appellant's præcipe, together with appellees' counter præcipe, the matter called for by sections 15 of Subdivision A, and 30 of Subdivision B thereof, notice to appellees of changes, etc. in the transcript and other appeal papers and acknowledgment of service of said notice, and this stipulation may be certified by the Clerk of the Court of Civil Appeals to said Clerk of the Supreme Court as the transcript of record on this appeal.

[fols. 1095-1096] 3. This stipulation is not intended as a waiver either by appellant or appellees of the right to seek a finding and order as to costs of supervising and printing, in case either party causes unnecessary parts of the record to be printed.

Dated 5th day of March, 1937.

F. G. Coates, Counsel for Appellant. Edw. H. Lange, Alfred M. Scott, Counsel for Appellees.

[fol. 1097] [File endorsement omitted]

[fol. 1098] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

[Title omitted]

ORDER ALLOWING ORIGINAL RECORD TO BE CERTIFIED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed March 5, 1937

It appearing that an appeal in this cause has been allowed to the Supreme Court of the United States and that

appellant and appellees have entered into a certain stipulation dated 5th day of March, 1937, now on file in this court, whereby it is contemplated that the original record in this cause will be sent to the Clerk of the Supreme Court of the United States as part of the record in said appeal thereto. And it appearing further that there is good cause for permitting said original record to be so used;

[fols. 1099-1100] It is Therefore Ordered that the Clerk of this Court, as part of the record on said appeal, be and he is hereby authorized and directed to certify and send to the Clerk of the Supreme Court of the United States at Washington the following portions of the record in this Court:

The Transcript, Vols. I-IV and Vols. A-E, Statement of Facts;

conditioned, that said record shall be returned to this Court when said appeal to the Supreme Court of the United States is finally determined.

James W. McClendon, Chief Justice, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. 1101] Bill of Costs omitted in printing.

[fol. 1102] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, hereby certify that the typewritten transcript of record consisting of 1104 pages and in four volumes, volumes 1-3 being certified by me on the 27th day of February 1937, and volume 4 being certified by me on the 5th day of March, 1937, are true and correct copies and statements from the record on appeal in said court in cause No. 8176 styled United Gas Public Service Company, Appellant v. State of Texas, et al., Appellees, or are the original papers or true copies thereof filed with me upon the appeal in said cause to the Supreme Court of the United States. I further certify that said volumes 1-4, together with the Transcript certified

on June 20, 1934 by George H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in cause No. 52,774, 53rd District Court, Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, together with Volumes I-IV and Volumes A-E of the Statement of Facts in said cause No. 52,774, filed by George H. Templin, District Clerk on the 8th day of June, 1934, and [fols. 1103-1104] filed in this Court of Civil Appeals on the 21st day of June, 1934 comprise the entire record on this appeal designated by the præcipes of appellant and appellees, as modified by the stipulation dated the 5th day of March, 1937, and appearing on pages 1092-1095 of volume 4 of my typewritten transcript.

In Testimony Whereof, witness my hand and the seal of said Court of Civil Appeals this 5th day of March, 1937.

R. E. Moore, Clerk, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. a] [File endorsements omitted]

* * * * * * *

[fol. 1] In Fifty-Third District Court, Travis County, Texas

No. 52,774

The State of Texas et al.

v.

United Gas Public Service Company

Statement of Facts—Filed June 1, 1934

Before Hon. C. A. Wheeler, Judge, and a Jury

Appearances

A. R. Stout, Esq., Assistant Attorney General; W. C. Fitzhugh, Esq., Assistant Attorney General, for the State of Texas.

R. L. Bobbitt, Esq., Edward H. Lange, Esq., for the City of Laredo.

Frank G. Coates, Esq., Tom Scurry, Esq., John Bullington, Esq., of Baker, Botts, Andrews & Wharton, Houston, Texas.

C. B. Neel, Esq., Ben H. Powell, Esq., for United Gas Public Service Company.

fols. 2-10] Wednesday, March 7, 1934

Morning Session: 9:00 a. m.

(The members of the jury were selected and sworn, and thereupon were excused by the Court until 2:00 p. m.)

Afternoon Session: 2:00 p. m.

(The members of the jury were excused by the Court until Thursday, March 8, 1934, at 9:00 a. m.)

Thursday, March 8, 1934

Morning Session: 9:00 a. m.

* * * * * * *

fol. 11] C. F. PETET, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination

Questions by Mr. Lange:

Q. State your name.
A. C. F. Petet.
Q. Where do you live, Mr. Petet?
A. In Austin.

fol. 12] Q. What is your occupation at this time?
A. Secretary of the Railroad Commission of Texas.
Q. How long have you held that position?
A. It will soon be ten years.
Q. You held that position on the 13th day of June, 1933?
A. Yes, sir.
Q. And have held it ever since that time?
A. Yes, sir.

Mr. Lange: This is a certified copy of the Railroad Commission's order of June 13, 1933. I want the witness to identify it.

Q. Is that instrument that you held a certified copy of the Railroad Commission's order entered in the case to which it refers?

A. Yes, sir.

Mr. Coates: Is that both the opinion and order?

A. It does go to the opinion and order.

Mr. Coates; To which defendant, United Gas Public Service Company, objects for each of the reasons stated in its Bill of Exception No. 1.

The Court: Overruled.

Mr. Coates: Note our exception.

(Thereupon the copy of the opinion and order was offered in evidence by the plaintiffs and marked Plaintiffs' Exhibit No. 3. This exhibit appears in Volume of Exhibits III, page- 1769 and 1725.)

Mr. Coates: Now, at this time we move the Court to instruct the jury that they can consider this opinion and order only for the purpose of showing that the opinion and [fol. 13] order were made and entered, and not as evidence of the truth of any of the statements therein contained.

The Court: Overruled.

Mr. Coates: Note our exception.

Q. Mr. Petet, will you identify this instrument?

A. Yes, sir. This is an instrument that is on record in the files of the Railroad Commission of Texas.

Q. I will ask you whether or not it is the bond filed by the Texas Border Gas Company with the Railroad Commission in this case?

A. It is a copy of the bond.

Q. A certified copy?

A. Yes, sir.

Q. At the time it appealed to the Railroad Commission?

A. Yes, sir.

Q. From the ordinance passed in the City of Laredo?

A. Yes, sir.

Mr. Lange: We offer this in evidence.

Mr. Coates: To which defendant objects because——

The Court: Is there any issue on that, that the Railroad Commission did not have jurisdiction?

Mr. Coates: No, sir.

The Court: Then the objection is sustained.

Mr. Lange: Note our exception. That is all, Mr. Petet.
Mr. Coates: No cross-examination.

(Witness excused.)

[fol. 14] Mr. Lange: Now, if the Court please, we desire at this time to stipulate for the purpose of the record that the 55-cent rate provided for in this order has never been put into effect and is not now in effect.

Mr. Coates: That is true, and the plaintiff need not introduce any evidence that the 55-cent rate has not been put into effect, because it is a fact that it has not been.

Mr. Stout: And that the 75-cent rate is still being charged and collected from the consumers in the City of Laredo.

Mr. Lange: The order and opinion that we have here is the same order which we read to the jury this morning, and if it will be considered that it has been read into the record and has been read to the jury, then we will not read it again at this time. Is there any objection to the fact that it is not re-read again?

Mr. Coates: No, sir; except, of course, it is subject to the objection made by us this morning.

Mr. Lange: The plaintiff rests.

* * * * * * *

[fol. 15] Henry Beck, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. Henry Beck.
Q. What is your business, Mr. Beck?
A. I am Chief Reporter for the Railroad Commission.
Q. How long have you been employed in that capacity?
A. Something over four years.
Q. Mr. Beck, were you Chief Reporter for the Railroad Commission in October and November, 1932?
A. Yes, sir.
Q. During those two months did you report the testimony and likewise all stipulations and agreements set forth in the

hearing before the Railroad Commission in connection with the Laredo case?

A. Yes, sir.

Q. Did you correctly so report those proceedings?

A. Yes, sir.

Mr. Lange: Now, if Your Honor please, what is the relevancy of that testimony in this hearing at this time?

Mr. Coates: We are going to introduce a stipulation with reference to this 5-cent well head price.

[fol. 16] Mr. Lange: We think the entire matter that is to be proved is to be proved up here.

Mr. Bobbitt: Any stipulation made in the hearing before the Railroad Commission has no binding effect or relevancy here.

The Court: I don't know whether he wants to introduce it as a stipulation to bind you here or not now. I don't know what he wants to do yet.

Mr. Bobbitt: We were just asking the purpose of this.

Mr. Coates: I would like to have the last question asked the witness read.

(Thereupon the Reporter read the last preceding question asked the witness, as follows: "Q. Did you correctly so report those proceedings?")

Mr. Coates: What was your answer, Mr. Beck?

A. Yes, sir.

Q. Was the testimony, stipulation, and so forth, in that proceeding reduced to writing?

A. Yes, sir.

Mr. Lange: If the Court please, we still do not know the purpose of that inquiry.

Mr. Coates: We know the purpose of it.

The Court: I don't know of any rules that require him to disclose all his purposes at this time. You can object if you want to, though.

Q. Do you hold in your hand a transcript of such testimony, Mr. Beck?

[fol. 17] A. A good part of it. I don't think it is complete.

Q. But such part as you hold is a part of the transcript of the testimony in that hearing?

A. Yes, sir.

Q. Will you kindly read into the record here a stipulation contained on pages 213 and 214 of that record?

Mr. Lange: Now, if the Court please, we object to any stipulation that may have been made——

The Court: Let me see what it is.

Mr. Lange: —before the Railroad Commission. The Court is trying the case on the evidence introduced before it here.

The Court (after reading portion of record referred to above): I understand you are offering this as a stipulation made and entered into before the Railroad Commission?

Mr. Coates: It was made and entered into at the hearing of this case before the Railroad Commission. It is the same stipulation referred to in the opinion and order of the Commission, and I am sure the Court has read it completely.

The Court: I have read it. I think it is admissible, gentlemen. Both sides have pleaded you had such a stipulation, and they are offering it here as a stipulation made up there at that hearing before the Railroad Commission.

Mr. Lange: We except.

[fol. 18] Q. Please read such stipulation, Mr. Beck.

Mr. Bobbitt: I would like to understand the theory upon which the Court bases his ruling.

The Court: Better retire the jury. I don't want my theories of the case to get before the jury.

(Thereupon the jury were retired from the courtroom.)

The Court: In this case the plaintiff pleads an order of the Railroad Commission, pleads it as a valid, subsisting order, asking an injunction of this Court to enforce it. Supporting that pleading the plaintiff has introduced in evidence what purports to be an opinion and order of the Railroad Commission; and the defendant says that order is unjust, unreasonable, discriminatory and confiscatory as to them. Now, that is the question for this Court to determine, whether it is unjust, unreasonable, discriminatory and confiscatory as to them. Any matter heard before the Railroad Commission is proper to be heard here in order to determine whether they did make such arbitrary and unreasonable and discriminatory order. He is offering this here, as I understand it, to show that you had a stipulation, and at least that much could not be arbitrary if you gentlemen agreed on it up there. So I think it is admissible.

Mr. Lange: Of course, this is a trial de novo, and we are not bound by that stipulation in this proceeding.

The Court: Certainly you are not bound by that stipula-
[fol. 19] tion in this proceeding. I am admitting it on the theory that it is admissible as showing whether the order of the Railroad Commission is unreasonable, arbitrary, confiscatory, and discriminatory.

Mr. Lange: But is not binding here in this proceeding.

The Court: You haven't agreed it is binding here, have you?

Mr. Lange: No, sir.

The Court: Well, the Court has not ruled that it was. Call the jury in.

(Thereupon the jury were returned to the Court room.)

By Mr. Coates:

Q. Please read the stipulation, Mr. Beck.

A. This is — statement by Mr. Coates: "The City of Laredo and ourselves have reached an agreement on one thing, and as preliminary to the stipulation I am about to enter into the record, I will state the purpose of it; the utilities companies in this case have not inventoried and appraised the production properties, including the wells, which are used and useful to serve gas to the City of Laredo, but instead, and in order to simplify the matter as much as possible, have used a price of 5 cents per thousand cubic feet for gas at the mouth of the well; in the accounting figures for the South Texas Gas Company, the purchase price is computed at 5 cents per thousand cubic feet, and that is shown as the cost [fol. 20] of the purchase price of gas in the accounting exhibits that are still to be introduced. It has been agreed and stipulated between Texas Border Gas Company and South Texas Gas Company that for the purposes of this case and all purposes of this case, the fair prevailing market price, and the fair worth of gas in the Laredo area at the mouth of the wells is 5 cents per M. *D*. F.

"Mr. Bobbitt: That is correct, but that does not mean, of course, that there is not plenty of gas available that could be acquired at a lower price.

"Mr. Coates: No, and it does not mean there is not some gas that would cost you more, but for the purposes of this case, and for the purpose of fixing the price of gas to start

with, it is stipulated that the fair prevailing price shall be treated in this case for the purpose of fixing rates, and finding a net return, and a net rate of return, and so forth, at 5 cents per thousand dubic feet at the mouth of the well.

"Mr. Bobbitt: That is correct.

"Commissioner Thompson: That will mean that we will not be given the burden of figuring reserves and depletion and so on; we are very glad to have this stipulation. It saves us lots of study.

"Mr. Coates: It saves us some, too"

Mr. Coates: If there is anything further in this record relating to that stipulation, it is agreed here and now by [fols. 21-107] United Gas Public Service Company that if any of the attorneys here find it, that it may likewise be introduced in evidence, either in limitation, or extension, or in explanation of the stipulation here introduced. It is my thought that that is the complete stipulation.

Mr. Bobbitt: That is our understanding.

The Court: It is agreed that if there is anything else you may read it, too.

[fol. 108] Testimony of E. B. NEISWANGER

Cross-interrogatory No. 5: Is it not a fact that on January 1st, 1928, the rates for natural gas (used as fuel) paid by the Central Power & Light Company to the Border Gas Company in the operation of the Central Power & Light Company's Laredo plant were as follows: 20c per M. C. F. for all natural gas purchased up to 10,000 M. C. F. per month; and 16c net per M. C. F. for all natural gas purchased in excess of or over 10,000 M. C. F. per month?

To the 5th Cross-interrogatory he answers: Yes, for the portion used as fuel for steam operation.

Cross-interrogatory No. 6: Is it not a fact that the 16c rate referred to in the preceding cross interrogatory was arbitrarily increased by the Texas Border Gas Company to 18c per M. C. F. shortly after March, 1928, when the Laredo gas distribution system was taken over by the said Texas Border Gas Company; in connection with this interrogatory, please state when the said 18c increased rate went into effect and how long it remained in effect, as reflected in the

monthly purchases of natural gas by the Central Power & Light Company and its Laredo unit, from the Texas Border Gas Company.

To the 6th Cross-interrogatory he answers: The increase in the price of boiler fuel gas from 16c per M. C. F. to [fols. 109-116] 18c per M. C. F. for gas purchased from the Texas Border Gas Company and its successors became effective on January 1, 1929 and has been continued in effect to the present date.

* * * * * * *

[fol. 117] Testimony of H. E. RANDALL

Cross-examination.

Questions by Mr. Lange.

Q. Mr. Randall, when did you first become connected with the United Gas System?

A. In 1925; that is, its predecessors.

Q. What predecessors?

A. It was known at that time as the Moody Seagraves interests.

Q. What plants did they operate in connection with this Laredo area?

A. They did not operate any.

Q. They didn't?

A. No.

Q. What part of the state, or where did those interests operate?

A. They first operated in Corpus Christi.

Q. Then you remained with them during the time that they later acquired the properties at Laredo?

A. Yes.

Q. Did you have any connection with the old Border Gas Company that operated at Laredo?

A. Not until the time the Moody Seagraves interests or the South Texas went into that group, which was in 1928.

Q. April, 1928, was the time when the old Border Gas Company was taken over by the Texas Border and South Texas and South Texas Production Company?

A. That's right.

[fol. 118] Q. In other words, the production, transmission and distribution properties were split into three companies?

A. That's right.

Q. At that time you came with these companies?

A. Yes.

Q. Did you at that time have anything to do with any negotiations with reference to building up industrial sales or planning the future of industrial sales in that area?

A. Yes.

Q. At that time, the Central Power & Light Company or its predecessor was operating its generating plant, supplying the entire Laredo district, wasn't it?

A. Yes.

Q. Laredo and the adjoining towns?

A. Yes.

Q. From that plant alone?

A. That is my understanding. I wouldn't state it for the truth; are you talking about the power plant?

Q. Yes, the power and light plant; they generated light and power for light, power and street railway operations, didn't they? Wasn't that all one operation?

A. Yes.

Q. And you heard Mr. Neiswanger's answers to the questions with reference to the amount of gas they used at that time, in 1928?

A. Yes.

[fol. 119] Q. There was no hook-up with any power lines—they didn't bring in any power; they generated it right there?

A. That is my understanding.

Q. You were the industrial manager of gas sales for that area?

A. That is true, but I would state I am not entirely familiar with all the Central Power & Light Company's lines.

Q. You were familiar with the Laredo area of it?

A. No, sir; I don't see where I would have——.

Q. I am talking about when you were with the Moody Seagraves interests in 1928, when they acquired the Laredo properties.

A. Yes.

Q. Your business as I understand it, was at that time to see that the industrial sales were held and increased. That was your main business, wasn't it?

A. That is true.

Q. Well then, the Central Power & Light Company being one of your biggest industrial users there, you were very much interested in seeing that they not only stayed but that they increased their consumption of gas there?

A. Yes, that's right.

Q. And that was a very vital part of your work, wasn't it?

A. Yes.

Q. You stated you were with the Moody Seagraves interests at that time. They had an appraisal of those properties made at the time they bought it, didn't they?

A. I think so.

[fol. 120] Mr. Coates: What properties?

Q. The distribution, transmission and production properties, comprising this system; and I will indicate to the court in a minute, what I want to develop.

The Court: No objection has been made; go ahead.

Q. You were with them when they acquired those properties that were split up into the three groups I just mentioned?

A. Yes.

Q. At that time, isn't it a fact that the Central Power & Light Company was operating quite extensively in Laredo and these little adjoining towns, or up and down the right, as you might call it?

A. Yes.

Q. They were supplying power to pumping plants along the river?

A. Yes.

Q. And their sales were increasing considerably—they were getting along quite well, weren't they?

A. They seemed to think so.

Q. And making progress?

A. They seemed to think so.

Q. Well, as a matter of fact, weren't they?

A. I was not familiar with their entire financial revenues, at all.

Q. Well, isn't it a fact that at the time these properties were taken over on an appraisal, or at the time the new set up was made of the three companies, that there was a serious

danger of the Central Power & Light Company, if its activi-
[fol. 121] ties were increased, it wouldn't result in a reduction of gas used by those pumping plants?

Mr. Coates: We object to that as not being in cross-examination of anything brought out on direct examination of this witness, and it is not material to any issue which we see in this case.

The Court: Well, I am not sustaining you on the ground that it is not in cross to anything you asked about, because they are not confined to that, but I do believe it is objectionable because it calls for a pure conclusion and speculation on the part of this witness as to a concern he doesn't know anything about, and was not connected with.

Mr. Coates: Yes, and we object to it on the grounds that it is speculative and calls for a conclusion of the witness.

The Court: Sustain the objection.

Mr. Lange: This is the purpose of it: We are prepared to show that the Central Power & Light Company's increase in sales was militating and would militate against——

Mr. Coates: We object to counsel testifying in the presence of the jury.

The Court: I will sustain the objection. You may have your bill, gentlemen, but that question as asked of this witness, I think is immaterial.

Mr. Bobbitt: They are complaining of gas sales.

The Court: If you will read that question, you will see
[fol. 122] how objectionable it is.

Mr. Lange: I will withdraw that question and ask the witness what he knows of his own knowledge of that fact, if the court please.

The Court: Proceed.

Q. Mr. Randall, at that time, in connection with your business or your work as industrial sales manager, and in connection with industrial sales, what was the price paid by the Central Power & Light Company for gas that was used and bought from the Texas Border Gas Company or the Border Gas Company?

Mr. Coates: Make the time definite; you said "at that time".

Q. I will make it definite—in the year 1928.

A. Twenty cents per thousand cubic feet for the first 10,000 M. C. F. a month, and 16 cents for all over.

Q. When was that price increased?
A. The first of 1929.
Q. How much was it increased?
A. Two cents on the bottom step.
Q. How much on the other step?
A. None.
Q. Why was it increased?
A. At that time there were certain increases in the prices of competitive fuels. We sell gas on a competitive fuel basis. Other competitive fuels had gone up; we had an increase in expenses and we thought we were entitled to a higher rate.
[fol. 123] Q. And that was why it was increased?
A. Yes. We sell gas, if I might say this, so that it will save money over other fuels. Sometimes the margin is small and other times we try to get it where there is a fair margin.
Q. At that time, or prior to the increase in 1928 or shortly prior thereto, I will ask you whether or not you know that the Central Power & Light Company, Laredo unit, at that time was contemplating either increasing their unit or putting in additional machinery there?

Mr. Coates: Are you asking this of the witness' own personal knowledge?
The Court: He asked if he knew whether or not they were contemplating.

Q. Yes, in his work in connection with the industrial sales.
A. Not to their present plant.
Q. Well, to what extent were they contemplating increasing their production there?
A. They were contemplating at that time or a little later than that time, a new plant.
Q. When was it they first took up the matter or you first had knowledge of the matter of them wanting to increase the size of their plant?
A. I didn't say—you misunderstood me. My answer to the question was that they were not contemplating any increase in their present plant, but building a new plant within the vicinity of Laredo.
[fol. 124] Q. Within the vicinity of Laredo?
A. Yes.
Q. And if they had increased the size of their plant, any increase in the size of the plant or a new plant, contemplates the increased use of gas as a fuel?
A. Yes.

Q. And would have meant an increase in the use of natural gas as a fuel?

A. Yes.

Q. Now, the Moody Seagraves interests—when did they part with their interests in these properties to the United Gas Public Service Company?

A. In 1930, I believe.

Q. And the increase in the rate for natural gas used by an electric power generating plant is a factor in their operating costs, isn't it?

A. Oh, yes.

Q. And any decrease or increase is a material factor in their operating costs?

A. Yes.

Q. In determining whether or not you are going to build a new electric plant, if you know, would that be a material factor in determining whether you would build a plant at one place or at another?

Mr. Coates: That is going far afield, speculative and calls for a conclusion of the witness, and it is not in cross-exam- [fol. 125] ination of anything brought out on direct, and we object to it on the grounds stated.

Mr. Lange: If the court please, that same character of testimony was developed in the Neiswanger deposition.

The Court: Now listen here; this testimony of course calls for a conclusion of the witness, and unless this man's experience justifies him in knowing whether or not * * * however, I believe he is qualified. I overrule the objection.

Mr. Coates: Note our exception.

Q. Read the question.

(Whereupon the last preceding question, towit: "In determining whether or not you are going to build a new electric plant, if you know, would that be a material factor in determing whether you would build a plant at one place or at another?" was read to the witness.)

A. Not altogether.

Q. Well, to what extent?

A. There is more than your actual operating costs that enter into a location of a plant; the principal one is your markets.

Q. That is true. Referring back to your familiarity with the Laredo markets again, the Central Power & Light Com-

pany unit at that time, before it was connected with the other power units, was furnishing the entire area at Laredo, wasn't it, with power and light?

A. That is my understanding.

Q. And at that time they had no other line serving Laredo with power and light?

A. To that I answered while ago that I was not entirely [fol. 126] familiar with all their transmission lines, and could not answer that question.

Q. In 1928, at the time you were with the Moody Seagraves interests in this capacity as sales manager for industrial sales, the Laredo unit of the Central Power & Light Company was not connected with any power lines outside; it was generating all its electric power at Laredo?

Mr. Coates: Is that a question of the witness or is counsel testifying now?

Q. I am asking the question: Isn't that a fact?

A. As I answered you before, I am not familiar with all details of the Central Power & Light Company's transmission lines.

Q. Were you at that time?

A. No, sir.

Q. How long were you in that Laredo area?

A. I didn't spend all my time in that Laredo area, but covered the entire system for the United Gas System or its predecessors.

Q. And do you know when they hooked up the Laredo area from the outside with other lines?

A. From Mr. Neiswanger's deposition, he give it——

Mr. Coates: Do you know of your own knowledge?

A. No sir. He said, I believe, 1931. He stated to me in several conversations that they intended to do it several years ago but didn't get it done as soon as they expected.

Q. It was not in 1928 or 1929 from his deposition.

[fol. 127] Mr. Coates: Have you asked the question of the witness, or made a statement?

Q. I am going to ask you the question, whether it was in 1928 or 1929 or later?

A. I couldn't say.

Q. You do not, then, as manager of industrial sales in 1928, know whether they were hooked up with any outside power line?

A. No, sir.

Q. I will ask you this question; if at that time, in 1928, they were not hooked up with any outside power lines and were generating all their power right at Laredo in that unit which your company was serving with gas, if they were contemplating building a new unit, would the cost of natural gas as fuel be a material factor to guide them?

A. It would be some factor, yes.

Q. What do you mean by some factor?

A. That is not the entire cost of an electric plant.

Q. How material would it be?

A. To my best recollection the power costs of a power plant is about 20 to 25 per cent of their manufacturing costs.

Mr. Coates: That does not take into account any transmission or distribution costs?

A. No, sir. That is the actual manufacturing costs in the plant.

Q. Well, if you have a segregated unit that is not connected with any power lines outside, and there is no loss of lines, you just contemplate that unit—you are not con- [fols. 128-130] templating an interconnected unit but only a segregated unit; isn't that true?

A. That is correct.

* * * * * * *

[fol. 131] Questions by Mr. Bobbitt:

Q. The operation of this plant furnished an outlet for a [fols. 132-134] large amount or a large market for industrial gas consumption, did it not?

A. No, sir; I wouldn't say it was a large market for industrial gas.

Q. They burned a lot of natural gas in that refinery, didn't they, there in Laredo, when it was in operation?

A. Do you mean large sales, compared with other refineries?

Q. How much, more or less——

The Court: Isn't the amount already in the record?

Mr. Coates: I think the dollars amount but not the M. C. F.

Q. I don't think so, Your Honor. I am talking about when it was in operation.

The Court: Well, I may be wrong about it, and you can get it in there quicker than we can talk about it; go ahead.

Q. Approximately how much gas did this Motor Fuel Products Company consume when it was in operation?

A. If I might show the exact amount here, I think I have it. For the period 1928, through March, 1929, it was $2,959.00; and from April 10, 1929, to December 31, 1929, it was $7,103.60. January 1, 1930, through December 31, 1930, it was $16,347.80.

Q. That is money paid by that concern for natural gas?

A. Yes.

Q. To the Texas Border Gas Company?

A. Yes.

Q. And the same concern owned both of them?

A. Yes.

* * * * * * *

[fol. 135] Friday, March 9, 1934

Afternoon Session: 3 P. M.

H. E. Womack, recalled for Cross-Examination, testified as follows:

Cross-examination.

Questions by Mr. Lange:

Q. Mr. Womack, what is your present position with the United Gas Public Service Company?

A. I am an accountant.

Q. An accountant?

A. Yes.

Q. What is your official position with them? What are you designated on their books as—what capacity, what position do you occupy?

A. That is it.

Q. Accountant?

A. Yes, sir.

Q. General accountant for the System?

A. Well, I have worked on the accounts of all the com-

[fol. 136] panies comprising the United Gas System.

Q. When you speak of the United Gas System, as reflected in Exhibit 2, page 4—will you please turn to that page of your exhibit?

A. (Witness turns to page of exhibit.)

Q. That comprises the companies enumerated on that page—United Gas Public Service Company, United Production Corporation, Southern Gas & Fuel Company, Northern Texas Utilities Company, Houston Gulf Gas Company, Houston Gas and Fuel Company, Southern Gas Company, Southern Gas Utilities, Inc., and Compania Mexicana de Gas, S. A.—those comprise the United Gas System, and you are accountant for that system?

A. I am employed by the United Gas Public Service Company.

Q. Then your work is accounting work for any of the companies enumerated in that system——

A. Yes.

Q. —set forth in here?

A. Yes; it has been and it is.

Q. The United Gas Public Service Company is, of course, only one of the companies enumerated on that page?

A. Yes.

Q. How long have you held that position, Mr. Womack?

A. Practically three years.

Q. You testified in the hearing held before the Railroad Commission in this case—held at Laredo in 1933?

[fol. 137] A. I did.

Q. Mr. Womack, referring to the defendant's exhibit No. 1, page 1, on page 1 is reflected the twelve months period ended December 31, 1932; is that correct?

A. Yes.

Q. And in the Exhibit 3, page 1, the twelve months operating period ended December 31, 1933 is reflected?

A. For the City of Laredo only.

Q. In preparing these exhibits did you make any adjustments to the Company's books?

A. Yes.

Q. Will you please itemize those and let us have them?

A. You want that for the twelve months through December, 1932?

Q. 1933 first.

A. I presume you want these adjustments as to figures rather than adjustments as they would affect the City of Laredo?

Q. Let us have the total figures first.

A. Yes. The first item that you might consider as being an adjustment is the charge for gas purchased.

Q. Charged for gas purchased?

A. Yes.

Q. Now, that appears on page 2 of Exhibit 3?

A. It does.

Q. In your exhibit it appears as $17,839.25?

A. Yes.

Q. And what do the books reflect that item to be?

A. The company does not make a charge as between dis-
[fol. 138] tricts or as among districts for the purchase of gas. That item is carried as a whole on the books of a particular company. It was necessary to show the cost of gas as applying to the City of Laredo.

Q. I want to know what the actual book charges are for gas—gas purchased that went to Laredo.

A. I stated that the Company does not make a charge as among districts for cost of gas. The records are not kept in that manner.

Q. Well, you know the volume of gas that went to Laredo that is embodied in this charge, don't you?

A. Yes.

Q. What was the price per M. C. F. for this gas? Give me the volume and the price per M. C. F. paid for it.

A. I stated twice that the company does not make a charge on its records as among districts for costs of gas. Now, I can give you the volume that I have included here in the purchase price that I have shown here.

Q. All right; what is the volume?

A. 356,785 M. C. F. at a pressure base of 2 pounds 14.7.

Q. Is that set up at a price of 5 cents per M. C. F. or what price?

A. I have included here at the stipulated price of 5 cents.

Mr. Lange: Of course, we are not bound by the 5 cents stipulated. That is a conclusion of the witness. I moved to strike "stipulated" out.

[fol. 139] The Court: You move to strike out "stipulated price"?

Mr. Lange: Yes; we want the actual price he set it up at on the books.

The Court: I take it you mean the price stipulated before the Railroad Commission?

Mr. Lange: Yes.

The Court: You don't mean to say any stipulated price for this year?

Mr. Lange: No; I don't.

Q. All right. Go ahead. That is for the calendar year period ended December 31, 1933?

A. It is.

Q. Now, can you give us the wells from which that gas was delivered to the line?

A. Yes; the gas that was delivered into the lines for use in serving consumers headed towards Laredo from the fields was produced from the George S. Marshall Charles Webster No. 1, the Snowden McSweeney——

Q. Can you after each well give me the volume so you won't have to go back to it—the total amount delivered from each well?

A. Well, it will delay it.

Q. It will?

A. Yes.

Q. All right; well, go back to it then. First, you gave the George S. Marshall?

A. Yes, Webster No. 1, the Snowden McSweeney A. C. de la Garza No. 2, the Associated Oil Company Webster [fol. 140] F-1, Foster-Barnsley de la Garza No. 2, Washington, Texas Barnsley No. 1, E. A. Sterling A. C. de la Garza No. 1, E. A. Sterling A. C. de la Garza No. 2, Jennings No. 10. That is all.

Q. That comprises all the wells?

A. Yes.

Q. Can you give me the gas delivered from each—total volume of gas delivered from each for the twelve months period?

A. This volume I am going to give you is at more than one pressure base.

Q. All right; you can designate the pressure base, can't you?

A. Yes; I can give the pressure base at the same time.

Q. Can you give the purchase price from each well as you go, or do you have to go back to that?

A. These figures I have given you, with the exception of the Jennings well, are purchase wells. As I understand, you have not asked for the volume of production yet, but just for the purchased.

Q. As you give me the volume from each well and name it, I want the price the voucher shows was paid for that gas.

Mr. Coates: As I understand it, you have not given him the gas produced from the Company-owned well?

Q. This is just from non-company owned wells?

A. Yes; with the exception of the Jennings No. 10. The George S. Marshall Charles Webster No. 1, at a pressure base of 2 pounds 14,4, 54,865 M. C. F. Did you ask for the price?

Q. Yes.

[fol. 141] A. At a price of 5 cents. And these prices I am going to give you are the prices which the Company paid for the gas.

Q. Yes.

A. They are not the total costs of the gas even in these wells.

Q. It is the price the Company paid for the gas?

A. It is the price the company paid only for the gas it bought.

Q. All right.

A. Snowden-McSweeney A. C. de la Garza No. 2, at 2 pounds 14.4, 70,079 M. C. F., the purchase price of that gas was 4 cents. Associated Oil Company's Webster F-1, at pressure base of 2 pounds, 14.4, 53,783 M. C. F. at a purchase price of 5 cents. Foster-Barnsley A. C. de la Garza No. 2, at 2 pounds 14.4 pressure base, 69,843 M. C. F., at a purchase price of 4 cents. Washington, Texas, Barnsley No. 1, at a pressure base of 2 pounds 14.4, 58,804 M. C. F., at a purchase price of 4 cents. E. A. Sterling A. C. de la Garza No. 1, at a pressure base of 2 pounds 14.7, 56,540 M. C. F., at a purchase price of 4 cents. E. A. Sterling A. C. de la Garza No. 2, at a pressure base of 2 pounds 14.7, 24,418, at a purchase price of 4 cents per M. C. F.

Q. That includes all the non-company—that is wells owned by others than the company?

A. That is correct.

Q. Or any subsidiary?

[fol. 142] A. That is correct.

Q. Now, Jennings No. 10?

A. You want the production from that one?

Q. Yes.

A. 428,513 M. C. F. at a pressure base of 2 pounds 14.4.

[fol. 143] Q. And what is the price of that?

A. That was not purchased.

Q. You mean that was not purchased from—Who was the owner—in whom is the ownership of that well?

A. The United Gas Production Corporation produces that gas—The United Production Corporation.

Q. And what does the United Gas Public Service Company pay for it?

A. I can't answer that question just now.

Q. Can you find that from the records of the Company?

A. Yes, I could find that from the records I have at the hotel, but I don't have it here.

Q. And also on what basis they pay the royalties on that?

A. Yes.

Q. Oh, yes,—do you know the location of that Jennings 10 Well, Mr. Womack, as to whether it is in the West Jennings Field or not, or the East Jennings Field, or what area it is located in?

A. I have never seen that well.

Q. You don't know, or do you know the location of the wells in those fields?

A. No, I don't.

Q. You remember at the time we had the hearing before the Railroad Commission there were two fields—the West and the East Jennings gas fields?

A. Yes.

[fol. 144] Q. With reference to those two fields, do you know in which one this Jennings No. 10 is located? Would your records——

A. Oh, yes.

Q. —that you have either here or at the hotel show that?

A. Yes.

Q. You have got that?

A. Yes.

Q. But you don't have that here?

A. No, I have it at the hotel.

Q. Well, you will get those for us, then. Now, these deliveries from the Jennings No. 10, making a total of 428,513 M. C. F., what part of that was delivered to the Laredo line?

A. The method that I used in computing the production of gas in all that Jennings area flowing toward Laredo was a proportionate part of the gas being produced from these Jennings Field wells.

Q. What proportionate part?

A. It was on the basis of the volumes of deliveries to the check meter in the Jennings Field towards Pescadito and the check meter in the Jennings Field towards Roma-Monterey. It was on the basis of the volume of deliveries to each of those as compared with the total volume produced from all wells.

Mr. Coates: You are referring to the transmission line check meters?

A. Yes.

[fol. 145] Q. Well, what per cent of that 428,513 M. C. F., then, did you allocate to Laredo?

Mr. Coates: Mr. Lange, are you asking about the Laredo city gate, or what is generally referred to as the Laredo area?

Mr. Lange: Flowing towards the Laredo area.

Mr. Coates: I see. Well, that is what I understood, and that is what I think the witness understands.

A. One point five three three per cent.

The Court: Do I understand your figures correctly as being less than two per cent?

A. Yes. That is all the gas produced, Judge, in that Jennings Field as being applicable to the line leading from the Jennings Field towards Laredo.

The Court: That is what I understood.

Q. How many thousand cubic feet would that be?

A. Of the production from this particular well?

Q. Yes.

A. I have not computed that. It will take me some little time—I have to compute that.

Q. Will that take you some time to compute?

A. Well, I will have to multiply the figure by the percentage.

Q. Well, will you make a note of that, then, if it delays—I would rather have it right now; it probably will be in its regular order.

The Court: If he can calculate it in a minute I will give him that time.

[fol. 146] A. Yes—yes, I can calculate it in a minute.

Now, I have forgotten the figure that I have told you was the production from that well.

Mr. Coates: Do you mind if I have Mr. Davis check you on your calculation?

A. No—no.

Mr. Coates: I know you can figure better than anybody, but a witness figuring on the stand, I would like to have some one check him.

A. Yes, that will be all right.

Mr. Coates: Will that be all right?

The Court: Yes; everybody in the court-room can check him—the jury and everybody else. We are all doing our level best, and any man is liable to make a mistake in putting figures down. What was that—four hundred and twenty-eight thousand and what?

A. Four hundred and twenty-eight thousand five hundred and thirteen. (Witness makes calculation.) Six five six nine M. cubic feet.

The Court: How many cubic feet is that?

A. Six thousand five hundred and sixty-nine.

Q. Now, under this item of Gas Purchased, page 2 of Exhibit 3, what other expenses, if any, do you say you included?

A. Purchased Gas Expenses is the first item.

Q. Then Purchased Gas Expenses—what do they include?

A. They include a charge for transporting gas into the Carolina-Tex field made by the Southern Gas Company to [fol. 147] the United Gas Public Service Company of one cent per M. C. F.

Q. One cent per M. C. F. Southern Gas is one of the companies included in the United Gas system in your exhibit—this Exhibit 2?

A. It is.

Q. Any other items or item in that Purchased Gas expenses account?

A. No, that is the only item.

Q. Does that include all of it?

A. That is the only item.

Q. That is the only item?

A. Yes.

Q. Now, what method of allocation did you pursue with reference to Laredo in compiling this exhibit?

A. In compiling this exhibit?

Q. This one item on page 2, Purchased Gas expenses.

A. I took the total volume of gas transported by the Southern Gas Company through its gathering system in the Carolina-Tex. field and multiplied that by the one cent and divided that as between the towns and the delivery points, including the city of Laredo, on the basis of the proportion of volumes delivered to those points.

Q. Now, do you anywhere in Exhibit 3 include any other gathering charge as an operating cost?

A. Any other gathering charge?

[fol. 148] Q. Yes,

A. Not from the Carolina-Tex. field.

Q. From what other field, if any?

A. I do from the Jennings Field.

Q. All right. Where does that appear?

A. It appears on the transmission section of expenses.

Q. On that same page?

A. Yes.

Q. Page 2?

A. Yes.

Q. Where—which particular item?

A. It appears under Superintendence and Operating Labor; it appears under Operating Supplies and Expenses; it appears under Maintenance of Lines and Equipment. That is all.

Q. How much appears in each?—can you give me that?

A. Yes. Under Superintendence and Operating Labor, $520.72; under Operating Supplies and Expenses, $417.54; under Maintenance of Lines and Equipment, $434.17. That is all.

Q. Is that the total for that district?

A. No; that is the total applicable to the city of Laredo.

Q. To the city of Laredo?

A. Yes.

Q. What is the total for the district?

A. You mean for the district in which the Jennings Field is located?

Q. Yes. What is the name of that district—as far as the [fol. 149] company's books are concerned, how is that district designated?

A. It is the Beeville district of United Gas Public Service Company.

Q. The Beeville district?

A. Yes. The total for the Beeville district in those items that I have mentioned is $3,850.99.

Q. Now, by what method of allocation did you arrive at those last three named figures that you just gave us?

A. They were apportioned first as between several sectors included in that entire area down there on the basis of a combination of lineal and three inch equivalent miles of pipe. That gave a per cent to what I term the Laredo sector, and that Laredo sector from that point to the Laredo distribution system on the volume of deliveries at the various delivery points.

Q. Is that the same basis you used in connection with the transmission system?

A. That is the same basis that I used on most of the accounts included in transmission expenses.

Q. Which accounts—can you designate those?

A. Can I?

Q. Yes.

A. There are a number of them. Yes, I can designate them.

Q. Do they appear in that exhibit or not?—you are still on that exhibit page 2?

A. That applies to everything included under transmission except the item pipe line rentals.

[fol. 150] Q. All items under transmission, excepting the item Pipe Line Rentals?

A. Yes. Naturally now, that was after making adjustments which you started out to ask for earlier in the day, but I hadn't gotten back to — yet.

Q. The figure of $3,850.99 from the Beeville district—can you tell us from what wells that was taken?

A. From what wells it was taken?

Q. Yes, in the district, that are included in that item?

A. I don't believe that I can answer that question. I don't believe there is an answer to the way you framed your question.

Q. Give us the wells that are included in that district—have you got the wells included there?

A. Yes, I have that. The cost of those gathering charges applied to gathering lines of the United Gas Public Service Company in the Jennings field.

Q. Now can you give us the names of the wells that that gathering line serves?

A. I can not..

Q. Who could give us those?

A. I presume the superintendent could give you those, or possibly some of the engineers could give those; some of the workmen along the line could give you that.

Q. Your records would not reflect the names of the wells on those gathering lines?

A. Now, I speak not from my own knowledge but I pre- [fol. 151] sume the company has maps showing all that. That is merely a presumption on my part.

Q. In order to be able to get the matter of the adjustments settled, have you those adjustments as to the figures on the company's books, when they were changed in this exhibit?

A. I can name those adjustments.

Q. If you will give us those now.

A. You were talking about the pipe line side—the transmission side -while ago; I presume you want that first?

Q. Yes.

A. And you of course want top figures again?

Q. Yes.

A. I increased gas purchase expense in the amount of $90.40. Insofar as the city of Laredo is concerned, I decreased pipe line rentals in the amount of $2,320.00. Now, this is getting into other journal sections than the transmission expense there. I decreased uncollectible bills $219.72.

Q. I think as we go along, Mr. Womack, I wanted to ask you as to each item, why you made the adjustment, and we might do that after each item, so we will not have to go back to it. The first one you mentioned was with reference to the pipe line rental item?

A. The first I mentioned was purchased gas expense. I increased that $90.40.

Q. Why was that increased?

A. It was to correct an error in computing the one cent [fol. 152] transportation charge in the Carolina-Tex field on the records during the year 1933.

Q. Now, which is the next?

A. I mentioned that insofar as the City of Laredo was concerned, I decreased pipe line rentals the sum of $2,300, as a top figure.

Q. Why was that change made?

A. This decrease was the amount of rentals paid by the United Gas Public Service Company to the Southern Gas Company for the rental of a pipe line during the months of November and December, 1933. Since there were some new wells opened, making an additional supply of gas available to the city of Laredo about November first of 1933, this pipe line rental, in my judgment, was an unnecessary charge from that date on, into the City of Laredo. This total amount of $2320.00 did not go to the City of Laredo. That was a top figure.

Q. Just to identify that pipe line to which the rental applied: Is that the pipe line situated in what is known as the East Jennings field, if you know?

A. I know generally where it is located. I believe your idea of the East Jennings and the West Jennings field is somewhat different from my own idea. It is located somewhere in that general Jennings area.

Q. All right; now which is the next item that you adjusted?

—. I decreased uncollectible accounts $219.72.

Q. Why was that done?

A. The reason for this reduction was that uncollectible [fol. 153] accounts occurring on the pipe line side, and this was all on the transmission side, should not be applied as against the City of Laredo, and I did not charge any uncollectible accounts into the City of Laredo except those that were incurred there.

Q. Which is the next item?

A. The re-conditioning of the Jennings-Pescadito six inch line, in the amount of $23,101.50.

Q. Where does that item appear, and under what heading on page 2?

A. It appears under maintenance of lines and equipment, pipe line. Included also in that account, the re-conditioning of the Carolina-Tex-Pescadito six inch line, the charge for which was $10,007.17.

Q. Why was this adjustment made?

A. Those charges appeared on the records of the company as maintenance of the San Antonio district, and in so far as the company is concerned, they are no doubt proper charges, but for rate making purposes, I considered those as being replacements or unusual maintenance, in

that they were large jobs and I therefore eliminated them from these accounts.

Q. Which is the next one?

A. Those are all the items that I eliminated from what the company terms pipe line district expense.

Q. Now, do you segregate your transmission system expense to districts on your books?

A. Yes.

Q. What district is the Laredo area in—what transmission district?

[fol. 154] A. San Antonio.

Q. And in what district is the Laredo distribution system?

A. Laredo. That is the Laredo distribution district; the Laredo distribution system is in the Laredo distribution district.

Q. And what basis of allocation do you use with reference to the transmission line, so far as that district is concerned?

A. In so far as the charges arising in the San Antonio district are concerned, the basis first to the South Texas gas area from the total of the district of lineal and three inch equivalent miles of pipe, each being given equal weight.

Mr. Coates: Will you explain that term, Mr. Womack?

A. By lineal miles of pipe is meant the length of the pipe in miles. By three inch equivalent miles of pipe is meant that the pipe is considered as though it were all of it three inches in diameter, for the purpose of getting a common diameter of the pipe. It is the reduction or the increase of all sizes of pipe to a common size, so that that basis was made on the length of the pipe and on the size of the pipe, each being given equal weight.

Q. Now, with reference to this San Antonio transmission district, will you give us your allocation factors that you used in connection with that?

A. I have not given you the apportionment clear into the City of Laredo yet.

Q. Let me have that first.

A. You want the method of apportionment into the City of Laredo?

[fol. 155] Q. Yes.

A. On the basis of lineal and three inch equivalent miles

of pipe from the South Texas gas area to the Laredo sector. From the Laredo sector to the Laredo city gate on the basis of deliveries of volumes of gas to the various delivery points. From the Laredo city gate to the city of Laredo on the basis of volumes of sales.

Q. Why did you use those factors?

A. Why did I?

Q. Why, in your opinion, did you choose those factors?

A. To me, those factors bear the closest relationship to the facts.

Q. Are there any other known methods of allocating such expenses?

A. Expenses of this character?

Q. Yes.

A. Yes, there are a number of methods that have been used at different times by different people.

Q. Now, if you will give me those percentages that I just asked for.

A. I believe I stated a moment ago that this did not apply to the pipe line rental; I stated that these percentages do apply to charges made in the San Antonio district, down to the City of Laredo, except the pipe line rental. Those percentages from the San Antonio District to the South Texas gas area, 26.96 percent. From the South Texas gas area to the Laredo sector, 52.9 percent. From the Laredo sector to the Laredo city gate, 50.90 percent. I am giving you these [fol. 156] percents of the reduction in percentage from the South Texas gas area on. From the Laredo city gate to the City of Laredo, 36.07 percent. That is all, as I mentioned, of the decreasing percentages from the South Texas gas area.

Mr. Coates: If you don't mind, let's clear that up at this time, Mr. Lange.

Mr. Lange: That will be all right, Mr. Coates.

Mr. Coates: In other words, from the San Antonio district down to the South Texas gas area your percentage was 26.96?

A. Yes.

Mr. Coates: And from the South Texas gas area to the Laredo city gate, your percentage stated was 52.9 percent?

A. No, it is not that much.

Mr. Coates: I mean it is 52.9 percent of the 26.96 percent; is that correct?

A. From the South Texas gas area to the Laredo sector is 52.9 percent of the 100 percent from that point.

Mr. Lange: Probably, Mr. Coates——

A. I believe I could straighten that out, if I may in my own language.

[fol. 157] Q. Just proceed, then, Mr. Womack. Just proceed as you desire.

A. From the San Antonio District to the South Texas gas area 26.96 per cent of those San Antonio district charges that I left in there. From that point on to inside the City of Laredo is a net of 36.07 per cent of that apportionment; inside the City of Laredo 36.07 per cent of 26.90 of the San Antonio district.

Q. Now, will you give us the total number of miles that takes into consideration?

A. There are in the San Antonio district 461.62 lineal miles of pipe, of which the South Texas gas area total lineal mileage is 135.48. In the San Antonio district there are 1526.58 of 3-inch equivalent miles of pipe, 374.88 of which are in the South Texas gas area.

Q. Now, can you give us the total, both lineal and 3-inch equivalent, in the South Texas area?

A. You want the sum of the two of them?

Q. The separate—the South Texas area separate from that of the Monterrey district.

A. I stated that in the South Texas gas area there are 135.48 lineal miles of pipe.

Q. Maybe this will clear it up. The Laredo sector and the Monterrey sector are separate?

A. Yes.

Q. Can you give us both the Laredo sector and the Monterrey sector?

[fols 158-179] A. Yes. You want each one of them separately?

Q. Yes.

A. In the South Texas gas area there are more than those two sectors. Now, in the Laredo sector there are 78.97 lineal miles of pipe. In the Roma-Monterrey sector 47.31 lineal miles of pipe.

Q. Lineal feet and the 3-inch equivalent, you better give it to us in all the sectors.

A. The Hebbronville line is 8.4 lineal miles long; the Bruni line .8 of one mile. The 3-inch equivalent miles of pipe are, Laredo sector 178.79 miles; the Roma-Monterrey sec-

tor 188.29 miles; Hebbronville 7.27 miles; and the Bruni .53 of a mile.

Q. That includes all sectors in that district?

A. That includes all sectors in the South Texas gas area.

* * * * * * *

[fol. 180] Saturday, March 10, 1934

Morning Session: 9:00 A. M.

H. E. WOMACK, a witness for defendant, resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Lange:

Q. Mr. Womack, yesterday afternoon we asked you to get certain items of information. Have you gotten those figures for us?—first, with reference to that general office general expense total.

A. May I ask again just what you wanted on that?

Q. The general office general expense total, the beginning point where you begin allocating as reflected by the books—the natural gas end?

A. Of those accounts that were apportioned to Laredo?

Q. No, the total, the entire total, including production, transmission and distribution—the beginning point as it appears on the books.

A. That was not exactly my understanding of what you wanted. I think I can give you that figure. My understanding of what you wanted was the total journal expenses before apportionment to those districts.

Q. Does that include production, transmission and distribution?

A. No, there is no production expense.

Q. I think, if you will recall, I explained to you that in [fol. 181] order to be able to work down we wanted the beginning point of the entire total.

A. Yes. (Witness examines his papers)

Mr. Coates: Mr. Womack, you said "yes". Does that mean that the figures you are about to give include production expense as well as transmission and distribution?

A. Yes. That total is $2,042,092.60.

Q. That represents what total?

A. That represents the total United Gas Public Service Company general office general expense.

Q. Yes, sir. That applies to the natural gas only?

A. No; included in that total are those expenses that apply to gasoline and crude oil.

Q. Well, can you give me the natural gas total?

A. The natural gas part of it?

Q. Yes.

A. I can't do that without doing some more work on it.

Q. Well, how much time will it take?

A. It will take fifteen or twenty minutes.

Q. Of course, that was the total that we inquired about yesterday.

A. It was not the total that I understood you to inquire about.

The Court: Well, Gentlemen, suppose you pass this item and go ahead with the other items and later call him back.

Mr. Lange: All right.

[fol. 182] Q. You understand now that it is the total that applies to the natural gas end of the account—production, transmission and distribution?

A. Do you want the total chargeable to natural gas operations before any apportionment to the operating departments on the natural gas?

Q. It is the total of Accounts 113-382 as it appears on your books.

A. The general office general expenses are not primarily carried in any 113 Account.

Q. Well, doesn't it represent the part that was actually paid?

A. No, it does not.

Q. Well, which account represents the total expenses—general office general expenses applied to natural gas?

A. Those accounts—the series numbers of those accounts are 154 and 150.

Q. Well, what do those accounts represent, then, as to the total general office general expenses applied to natural gas?

A. What do they represent?

Q. We want the total of the account.

A. That is what it will take me fifteen or twenty minutes to get.

Q. Well, you will get that for us?

A. Yes, sir.

Q. After you have that figure, we want the allocations to [fol. 183] both districts, 70 and 40, as you have made them.

A. You want the figure that is chargeable to operations of natural gas?

Q. Yes.

A. And the apportionments?

Q. Yes, allocated——

A. To District 70 and District 40?

Q. That is right.

A. Yes.

Q. In other words, the amount United Gas Public Service Company actually paid and allocated to those two districts, 70 and 40.

A. Well, you want the amount of general expenses that is chargeable to operations first?

Q. Yes.

A. And of that amount, the amount apportioned to District 70 and District 40?

Q. That is right.

A. All right.

Q. Well, now, the gas purchased from the Jennings No. 10, you were to get that. Have you got the volume of gas—the amount of gas purchased from Jennings No. 10? In giving your testimony yesterday you didn't have—I mean the price per cubic feet of gas taken from Jennings No. 10.

A. I believe yesterday I stated that that gas was produced by the United Production Corporation. The question you asked was the price, as I recall it, which the United Gas Public Service Company paid for it.

[fol. 184] Q. That is right.

A. And my answer to that question was that I did not know. I do not have records here in Austin that will give me that information. The question you asked me that I told you I did have here in Austin was the location of that well.

Q. You say you have the information where that well is located—do you or not?

A. I do have it.

Q. Where is it located?

A. It is located in what I would term the greater Jennings area. It is located west of the line from the Jennings field to Pescadito.

Q. I asked you yesterday with reference to the two fields as they were so designated in the Railroad Commission hearing. You recall that there were two fields that were designated in that hearing in the testimony that we adduced there. Do you recall the fact that there were two Jennings fields?

A. Yes.

Q. Designated in that hearing?

A. Yes, sir.

Q. Well, now, as to those two fields, one was designated as East Jennings Field and the other as West Jennings Field?

A. Yes, sir.

Q. Now, this Jennings No. 10, where is it located?

A. I stated yesterday that my idea of those two fields was somewhat different from your idea; that my idea of those two fields is that there is an overlap of them; in other [fol. 185] words, the West Jennings Field goes into the East Jennings Field, or the East Jennings Field goes into the West Jennings, but there is an overlap.

Q. Well, when we have a map here you can designate it on the map.

A. I can show you from a map the approximate location of that Jennings No. 10.

Q. Now, can you give us the total volume of gas gathered from the Jennings Field during this period ending December 31, 1933?

Mr. Coates: Do you mean the entire volume—the total volume of the entire Jennings Field?

Mr. Lange: Yes, and that part allocated to the Laredo area.

A. You want the total volume produced in the Jennings area?

Q. Yes.

A. One million nine hundred and three thousand nine hundred and seventy-six in cubic feet at a pressure base of two pounds fourteen point seven.

Q. Now, the part of that that was delivered to the Laredo area?

A. The part that was delivered to the Laredo area?

Q. Yes.

A. There is some unaccounted for in the gathering system in the Jennings area. I have apportioned the part of that unaccounted for as applicable to the Laredo area. The figures that I will give you as being applicable to the Laredo [fol. 186] area will include a proportionate part of that unaccounted for, together with the gas that was delivered. Is that the figure you want?

Q. Give us the total first and then the amount of the unaccounted for—the total first that was delivered to the Laredo area out of the total that you just gave us and then the amount of that that you applied to unaccounted for gas.

A. The total delivered to the Laredo area was twenty-seven thousand four hundred and thirty-one M. cubic feet at a pressure base of two pounds point fourteen from the Jennings field.

Q. During the twelve-month period ended December 31, 1933?

A. Yes.

Q. Mr. Womack, with reference to the District 70 operating expenses, will you give us the amount of those allocated to the South Texas area? Give it to us first before adjustment—the total before adjustment.

A. Two hundred and fifty thousand five hundred eighty-three dollars and twelve cents.

Q. That is the total?

A. Yes.

Q. Now the amount allocated to the South Texas area?

A. I made some adjustments——

Q. I want it before adjustment.

A. I made some adjustments before I made the apportionment.

[fol. 187] Q. Now, after you had made the adjustment and made the apportionment, what is the amount that is allocated to the South Texas area?

A. I made some adjustments before I apportioned any part of this to the South Texas area; after I made the apportionment to the South Texas area I made some additional adjustments between that point and the City of Laredo. Now, do you want the total after adjustments apportioned to the South Texas area but before any adjustments from that point to the City of Laredo?

Q. Yes.

A. That figure apportioned to the South Texas gas area, after adjustments from District 70 to the South Texas gas area, is $34,281.53.

Q. Now, give us the adjustments that you made.

A. I reduced the cost of gas purchased $127,704.26; I reduced transmission expenses $33,108.67.

Q. Any other adjustments?

A. Those were all, to that point.

Q. What adjustments did you make after you allocated, if any?

A. After I allocated——

Q. To the South Texas area.

A. In making the apportionment of those expenses to [fol. 188] the City of Laredo from the South Texas gas area I excluded uncollectible accounts in the amount of $219.72 entirely, which figure is a part of the apportioned figure from District 70 to the South Texas gas area. In so far as the City of Laredo is concerned, I reduced gas transportation and line rentals $2,300.00.

Q. Why was that adjustment made?

A. That was——

Mr. Coates: Mr. Lange, I don't like to interfere with your cross examination, but that was all gone over yesterday—I mean he told you the amount, and he explained why he made the adjustment; and this is simply repetition.

Mr. Lange: Not on this last item, I don't think, Mr. Coates.

Mr. Stout: Not on this item.

Mr. Coates: Well, I am quite certain that it was gone over, and the record will so reflect.

The Court: Gentlemen, this is going to be a long case in spite of the best we can do, so let's don't repeat anything.

Mr. Lange: No, there is no purpose of that.

The Court: Be sure about the record before you ask. I understand the Reporters are furnishing a daily transcript of it.

Mr. Bobbitt: No, sir, we are not getting any daily transcript.

[fol. 189] Mr. Stout: No, sir.

The Court: I thought you were getting one.

Mr. Stout: No, sir, and one reason why we can't get one——

The Court: You needn't state the reason. You are just not getting it; that is all I wanted to know.

Mr. Stout: Yes, sir.

Mr. Bobbitt: We have to pay for theirs, but can't get a copy for ourselves without paying for it again.

Mr. Coates: We object to that statement as entirely prejudicial, and ask that the jury be instructed not to consider it.

The Court: Yes, sir, gentlemen of the jury, you will not pay any attention to what these lawyers say back and forth to one another; it has nothing to do with the case, and they oughtn't to do it, and I will ask them not to do it any more. Go ahead, gentlemen.

Mr. Lange: Will you read the question to the witness, please?

(Thereupon the Reporter read the last preceding question, as follows: "Why was that adjustment made?"

A. My answer to that question yesterday was, in substances, as follows: I reduced the months of November and December entirely for the year 1933, for the reason that a new gathering system and wells being opened about that [fols. 190-198] time made the additional supply to be derived from other are-s from which the pipe line rental receives—from which pipe line receives its gas. That portion of the pipe line on which the rental is paid was unnecessary in so far as the City of Laredo is concerned.

* * * * * * *

[fol. 199] Monday, March 12, 1934

Morning Session: 10:00 a. m.

H. E. Womack, a witness for defendant, resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Fitzhugh:

Q. Mr. Womack, Mr. Lange asked you some questions about the position that you occupy with the company. I believe your answer to his questions was that you are an accountant. You have not specified, however, just exactly what your accounting position is. I wish you would make that plain for the jury and for us.

A. I have charge of accounting for the company in controversies over gas rates.

Q. Who is the Chief Accountant of the company?

A. I don't believe there is a person of that title with the company.

Q. You say there is no Chief Accountant?

A. No one with that title.

Q. How many accountants does the company have working for it?

A. In the entire system?

Q. Yes, sir.

A. I would say between one hundred and one hundred and fifty.

Q. Now, then, you are just one out of one hundred and fifty specially assigned to rate cases; is that the idea?

A. Yes.

Q. I believe you stated, Mr. Womack, that you are now [fol. 200] the holder of a certificate from the State of Oklahoma as a Certified Public Accountant?

A. Yes.

Q. When did you acquire that certificate?

A. About ten years ago.

Q. The present laws applying to the admission or to the obtaining of certificates as Certified Public Accountants that now apply in the State of Oklahoma were adopted about four years ago, were they not?

A. To my knowledge there has been no charge at all since I took the examination.

Q. Did the present law which now applies in Oklahoma obtain at the time that you took it?

A. I don't know of any change in the law.

Q. Did you have to take an examination?

A. Yes.

Q. In order to obtain your certificate?

A. Yes, sir.

Q. Is there any reciprocity between the State of Texas and the State of Oklahoma as to the matter of certificates?

A. I believe not.

Q. You do not hold a Texas certificate as a Certified Public Accountant?

Mr. Coates: Well, now, wait a minute. If the Court please, this man has not testified here nor has he attempted to testify that he is engaged in the general business of public

accountancy. He has testified that he is a full time employe [fol. 201] of the company. He has in answer to questions propounded by counsel testified that he is a Certified Public Accountant, and whether he is qualified to engage in the general business of certified public accountancy in Texas, not being here in that capacity, we think is wholly immaterial to any issue in the case.

The Court: I overrule the objection, because I can see what they are striking at on that point. Go ahead.

Q. You do not hold a Texas certificate?

A. No, I have not taken an examination in this State.

Q. In order to get one you would have to take an examination?

A. Yes.

Q. Now, I believe you testified, Mr. Womack, that your company uses a uniform system of accounts. Just what system is that—by whom has it been approved?

A. That classification is taken from and is patterned after the National Association of Railway and Utility Commissioners' accounting classification.

Q. Are there any regulations under which your company—are there any regulations with which your company is now compelled to comply that come from the Railroad Commission or any other regulatory commission of this State as to the form and classification of accounts that you should use?

A. Not to my knowledge. The company does file reports with the Railroad Commission, and they do set out some general title accounts.

Q. But your company is free to use whatever classifica- [fol. 202] tion of accounts it wants to?

A. As far as the State law of Texas is concerned, I believe so.

Q. Now, is there anything at all, Mr. Womack, particularly significant about the use of any classification of accounts except the fact that in adopting some classification of accounts you give your accountants a manual of instructions to guide them in entering historically on the books of the company the financial transactions of the company?

A. Standard classifications have been built up over a period of years. Naturally, over a long period of time one could get a better classification and a company following

that classification would be able to take advantage of that time spent by others in building it up.

Q. But when you say, Mr. Womack, that you have adopted a uniform classification of accounts as approved by the National Association of Utility and Railroad Commissioners you mean you have simply adopted for your company that particular manual of instructions; isn't that true?

A. I don't believe I know how to answer that question.

Q. You can't answer that "yes" or "no"?

The Court: Wait a minute. • • • All right, Gentlemen.

A. I don't believe that that question is capable of an answer "yes" or "no" without considerable explanation along with it.

[fol. 203] Q. Well, make whatever explanation you want.

The Witness: Will you repeat the last question?

(Thereupon the Reporter read the question, as follows: "Q. But when you say, Mr. Womack, that you have adopted a uniform classification of accounts as approved by the National Association of Utility and Railroad Commissioners you mean you have simply adopted for your company that particular manual of instructions; isn't that true?)

A. The accounting classification was adopted because it was believed by the company that it was a good classification, that the company naturally had to have some classification, and, as far as that is concerned, the employes have to have some sort of instructions as to the manner in which to make charges and credits to the various accounts.

Q. Well, now, that is a good answer, Mr. Womack, but I will ask you now if it is not a fact that the main thing about adopting a classification of accounts, and particularly the one you have adopted, is simply to give your accountants a manual of instructions in order to guide them in making entries of accounts on the company's books?

A. Any company has to have a chart of accounts or a series of accounts with numbers and titles in order for its employes to make correct charges and credits to the accounts.

Q. Well, just answer my question. I asked you if it was not a fact that the main thing about having a classification of accounts was not just to give the accountants working for the company a manual for their instruction in entering

the financial transactions of the company on the company's books. Now, isn't that a fact?

[fol. 204] Mr. Coates: We submit that that question has already been answered. He said it is nothing more than giving the accountants a manual with the instructions and forms——

Mr. Fitzhugh: Now, I object to counsel answering the question for the witness.

The Court: Gentlemen, don't interrupt each other.

Mr. Coates: We object to it as repetition of what has already been brought out by the witness.

The Court: Are you through?

Mr. Coates: Yes.

Mr. Fitzhugh: May it please the Court, I asked the witness a plain question capable of an answer, and I would like to have the witness answer the question without having the answer suggested by the lawyer.

The Court: Read the question, Mr. Reporter.

(Thereupon the Reporter read the question, as follows: "Q. Well, just answer my question. I asked you if it was not a fact that the main thing about having a classification of accounts was not just to give the accountants working for the company a manual for their instruction in entering the financial transactions of the company on the company's books. Now, isn't that a fact?)

The Court: I overrule the objection. Answer the question if you can.

A. That is not the entire purpose of a classification. One of the purposes of a classification is that the accountants will know where to charge and credit——

Q. Well, regardless of what classification——

[fol. 205] Mr. Coates: Well, now, let the witness complete his answer.

The Court: Let him finish.

Q. I beg your pardon. Have you finished now?

A. Yes, sir.

Q. Regardless of what classification you use, Mr. Womack, the use of the classification in itself does not prevent errors from being made on the company's books, does it?

A. To err is human.

Q. You can still make the same sort of mistakes while using the same form of classification accounts as the National Association of Railroad and Utility Commissioners use in their classification?

A. With the standard classification of accounts, errors are fewer.

Q. But you still are subject to the normal amount of human error?

A. Yes, sir.

Q. Now, the classification of accounts you use, Mr. Womack, has nothing to do with accounting theory, does it?

A. That classification is obtained on good accounting theory and practice.

Q. But the classification itself, Mr. Womack, does not expound any new accounting theory from what prevailed before the classification was adopted, does it?

A. I believe not.

The Court: Gentlemen, I kind of think we are getting into questions of what is accountancy and so forth. Let's [fol. 206] stick to the issues here. I think you have gone far enough with that.

Q. What rule has the company adopted, Mr. Womack, as to when an expenditure shall be regarded as a maintenance expenditure and when one properly chargeable to depreciation exists?

A. The rule on that is that each item or charge on each job is looked into thoroughly and it is decided whether that particular item or job is a maintenance charge or charged to something else.

Q. Well, how is the determination finally made?

A. Beg pardon?

Q. How is the determination finally made—when you get into each particular case to decide whether it shall be a maintenance charge or a depreciation and reserve charge, how is the determination finally made?

A. The purpose of the job and the magnitude of it are the things that enter into the decision, and a number of other things as well.

Q. I notice that one of your adjustments as testified to by you previously was the elimination of the expenditure of some six thousand dollars for replacement of pipe on the Pescadito-Jennings line. Am I correct in that?

A. I don't recall the amount which I did eliminate; I did

eliminate an item of replacement on the Jennings-Pescadito line.

Q. You eliminated that because you didn't regard that [fols. 207-226] as a proper charge for maintenance?

A. No, that was not the reason I eliminated that. I eliminated that item because I did not believe for the purpose of this rate controversy that it should be included in there, not because I did not believe it was a proper maintenance charge on the company's records.

* * * * * * *

[fol. 227] Recross-examination.

Questions by Mr. Bobbitt:

Q. I believe, Mr. Womack, you testified earlier in your examination here, on direct, that the gas purchased and furnished to Laredo, some of it was purchased at five cents a thousand cubic feet?

A. Yes.

Q. And some of it at four cents per thousand cubic feet?

A. Yes.

[fol. 228] Q. And some of it at three cents per thousand cubic feet?

A. No, I am sure that I didn't testify to three cents.

Q. Do you know, as auditor of this concern, whether or not they do and are now purchasing gas from producers in that area that goes to Laredo at three cents a thousand cubic feet?

A. There is no gas * * * let me get my papers here.

Mr. Coates: You are confining your question to gas purchased within the area served by the pipe lines which go to Laredo?

Q. I am just asking about the gas purchased down there in that area, some of which goes to Laredo.

Mr. Coates: What do you mean by "that area", Mr. Bobbitt?

Q. I am talking about the Laredo area, Mr. Coates; the wells right down there around the Jennings and the Carolina-Texas field, and that area down there that you take gas from.

A. There is no gas purchased for delivery to the city of Laredo at a price cheaper than four cents per M. C. F.

Q. Well, is there gas purchased that goes into the same lines that serve Laredo there, for three cents?

A. No.

Q. You are certain about that?

A. I say there is not.

Q. Now, going into this geological expense and other expense that you testified to a moment ago, incident to gas wells or production owned independently from your concern. Your company or its subsidiary owns some production there; isn't that true?

A. Yes.

[fol. 229] Q. And you furnish some of that gas produced from your company's own wells to the City of Laredo?

A. Yes.

Q. And then you purchase gas from independent producers?

A. Yes.

Q. Without taking any time or any detail as to the number, but you purchase gas from a number of independent gas producers in the Laredo area, do you not?

A. Well, several.

Q. Several of them?

A. Yes.

Q. Some of those wells from which you purchase gas from these independent producers have been producing gas a number of years, have they not?

A. I don't know.

Q. You don't know about that?

A. No.

Q. All you know about it is that the company buys the gas from these independent producers, at whatever price you may agree upon?

A. My work in connection with this case and in connection with this exhibit, covers the year 1933. I don't know as to those particular wells from which production is made, how long they have been producing.

Q. What I am getting at, you do know your company, not only for 1933, but prior years, purchased gas from independent producers?

[fol. 230] A. Yes.

Q. And some of those wells, as far as you know, have been producing gas for a number of years, have they not?

A. Well, so far as I know they may have been producing a day more than this year, or forty or fifty years.

Q. What particular geological expense or other expense Mr. Coates asked you about, does your company incur in taking gas from John Smith, for instance, who has a gas well out there on a lease, and offers to sell you that gas and you purchase gas, say, at four cents a thousand? What geological expense do you go to in the production and purchase of that gas?

A. The company and its geological department checks the value of that lease, as to what its production might be.

Q. What do you mean?

A. The geological department will look into that particular strip of country, and it will check—I am afraid I am getting so deep into geology I don't believe I can explain it.

Q. I don't think it is deep at all.

A. They do check the area of the land and whether or not, in their opinion, it will produce gas, and whether that will be gas of high B. T. U. content, and things of that nature.

Q. Well, are they concerned about how many wells this man may be able to produce, on say his forty acre lease, from which you are purchasing gas?

A. They are concerned and anticipate, in buying gas, as to whether they will have a reasonable supply of gas, and [fol. 231] whether they can expect a certain amount of gas from that one well or a number of wells on that particular lease of forty acres.

Q. But your company doesn't go out and geologize his lease for him; isn't that true?

A. Well, of course the producer first has done some work, or has had some geological work done for him; however, the company does some on its own account.

Q. It does not do it until they go to buy gas, do they? Say if a man has three gas wells on a forty acre lease, producing say 25,000,000 cubic feet of gas a day, and offers to sell that gas to your concern, and of which I think a number of such instances exist, you are interested in getting the gas, aren't you, at the best price you can buy it for?

A. Yes.

Q. You are not concerned about how much gas he has on his lease, are you?

A. Except this: The company is interested in knowing about how much gas they can expect to get from that lease and how long they can expect that lease or those wells to produce. The company, of course, first has to put in lines to that lease. It possibly, if it thinks they are not going to

get much gas from that lease, *it* has to anticipate that and make arrangements to purchase gas from other leases and from other owners.

Q. But you don't go out and spend any money geologizing the independent gas owner's leases; you just check over what he has out there and how it looks to you, and whether [fol. 232] you think it will justify building a gathering system out to his well?

A. That is some of the things we do, and that is an expense and costs money.

Q. On these particular leases, you don't know how much, do you?

A. No, I do not.

Q. That is just an estimate, and a policy that your company follows?

A. Well, there is an actual cost to all of that, of the geological department.

Q. Mr. Womack, have you any accurate statement of expenses incurred by your concern, geologizing any independent producer's lease along the lines you have testified about here?

A. No, I have not.

Q. Now, Mr. Womack, in these graphs or charts that you testified about here the other day, showing the trends of revenues to the company; in all of those calculations you used the purchase price of gas at five cents, didn't you?

A. Yes, that is correct.

Q. I think so, and not at four cents or three cents?

A. No, sir; it was at five cents.

Q. And only for a period of a year, several periods, which were taken into account in making the calculation?

A. Yes.

Q. Sometimes it is a year beginning in January, 1933, and then a year beginning in March, 1933, and then a year beginning in September. That is correct, isn't it?

[fol. 233] A. I don't believe——

A. Of course, they speak for themselves, as to that testimony?

A. Yes.

Q. Have you there, Mr. Womack, your Exhibit 5?

A. Yes.

Q. And will you turn to the last page of that exhibit, Graph No. 3? Do you have that before you?

A. I do.

Q. That page is denominated "Comparison—gross revenues—Laredo July 1928 through December 1933 with nonrecurring revenues shown." Now, the first stack, I believe you called it, or chart, includes gross revenues for the period ended June 30, 1929, and you give at the top in white $68,188.69?

A. Yes.

Q. Can you give us that figure in volume of gas that that represents?

A. No, I can't; I don't have that figure in Austin.

Q. Well, you could secure it for us, couldn't you, Mr. Womack?

A. Yes.

Q. And will you do that?

A. Yes.

Q. Yes, sir, if you will just take a note of it, please, sir. Now, you have the same information, Mr. Womack, for the next stack, the period ended June 30, 1930, with the dollars shown there as $91,603.56—will you give us the same information?

A. Yes; I will have to obtain that also; I don't have it here in Austin.

Q. And the same information, sir, for the third stack, the [fol. 234] period ended June 30, 1931, $56,415.13, and the same for the fifth stack, the period ended July 31, 1932, in volume of gas. Now, you understand what we would like to have?

A. Yes.

Q. You can secure that and will furnish it to us?

A. Yes, sir.

Q. Now, your Exhibit 6, Mr. Womack.

A. Yes, sir.

Q. Will you turn to page 2 of that exhibit, please? At the top of that page in this exhibit you state: "If the rate of 55 cents net per M. C. F. fixed in the Commission's order had been in effect during the years 1932 and 1933, operating results for such years would have been as follows: Operating revenue for 1932, $161,637.65." Now, the fifty-five cent rate never has been in effect—never has been put in effect by your company?

A. No, it has not.

Q. How did you arrive at what the operating revenues would be of $161,637.65?

A. I took the identical volumes sold during the year 1932.

Q. At seventy-five cents?

A. I say I took the volumes sold during the year 1932 to residential customers, and instead of using the rate that is in effect at the present time in Laredo I applied the fifty-five cent rate to that volume of sales to arrive at what [fol. 235] would have been the residential revenues.

Q. Yes, sir.

A. The remaining revenues—that is, the revenues derived from customers other than residential—I left as they were, as the new residential revenues to the classes of revenues, and this is the sum of all that.

Q. You assumed, of course, in that calculation, as I understand you, that if the rate had been fifty-five cents as fixed by the Commission instead of seventy — cents which you are charging, that you would have had the same sales?

A. Exactly.

Q. Exactly; that is the assumption that you proceeded upon?

A. Yes, sir.

Q. No more and no less?

A. Yes, sir.

Q. Just exactly?

A. Yes, sir.

Q. Now, how did you arrive, Mr. Womack, at the figure under the head of Operating Expenses of $125,001.40 for the year 1932?

A. Those are the figures that I showed operating expenses——

Q. It is right there on the same page.

A. They are the same expenses as I show in Exhibit No. 1.

Q. You just assumed that if the rate had been fifty-five cents instead of seventy-five the sales would have been the same and the operating expenses would be one hundred and twenty-five thousand?

[fols. 236-249] A. Yes, sir.

* * * * * * *

[fol. 250] Q. Now, referring back there, Mr. Womack, to that same exhibit—same page 2 of Exhibit 6—you use the same assumptions in arriving at what you denominate here "Net Operating Revenue"? You assumed that if the 55-cent

rate were put into effect, as directed by the Commission, instead of the 75-cent rate, which you are charging, that your Net Operating Revenue for 1932 would have been $36,636.25?

Mr. Coates: That is not the correct figure.

Mr. Bobbitt: $36,636.25.

Mr. Coates: I beg your pardon.

Q. Is that correct?

A. Will you read that question, please?

(Thereupon the Reporter read the following question: Q. Now, referring back there, Mr. Womack, to that same exhibit—same page 2 of Exhibit 6—you use the same assumptions in arriving at what you denominate here "Net Operating Revenue"? You assumed that if the 55-cent rate were put into effect, as directed by the Commission, instead of the 75-cent rate, which you are charging, that Your Net Operating Revenue for 1932 would have been $36,636.25?

[fol. 251] A. I believe I stated the manner in which I arrived at the operating revenues and at the operating expenses. Now, under the heading there "Net Operating Revenue", the thirty-six thousand dollars is the difference between the operating revenues and the operating expenses shown.

Q. Yes; we understand that; that is plain, and that is true.

A. Doesn't that answer your question?

Q. How is that?

A. Doesn't that answer your question?

Q. I think it does. Now, the same situation obtains for the year 1933 as outlined here in this exhibit. You make the assumption in arriving at operating revenue—operating expenses and net operating revenues—in arriving at those figures you assume that the 55-cent rate for domestic gas would bring the same amount of business and the same amount of dollars as your 75-cent rate which you are charging?

A. That it would bring the same amount of dollars?

Q. Yes.

A. As the 75 cent rate which we are charging?

Q. That there would not be any—let me see—just strike that question. Taking that year 1933 there now, under the heading of Operating Revenue, in arriving at that figure $138,256,85, you assume in making that calculation that the

55-cent rate, if placed in effect instead of the 75-cent rate which is in effect, your operating revenues would have amounted to that figure that you have outlined here?

[fols. 252-254] A. That is my judgment of what the revenues would have been, and that is—I believe I stated a few minutes ago, is in the light of my experience, and what I believe to be true of the conditions at Laredo.

Q. Yes, sir. Now, you are a friend, a capable accountant, and an official of this company. Will you give us, please, in short, so we can save as much time as possible, just how you arrive—the method you used in arriving at your figure of $138,256.85 for the year 1933 Operating Revenues?

A. Just how I arrived at that?

Q. Yes; just your computation—just tell us how you arrived at that figure.

A. That figure is the sum of revenues derived from residential, commercial, industrial, governmental, and municipal sales, and re-connect charges. All of them, except the residential revenues, I left as they were actually in the year 1933; I computed the residential revenue that is included in this figure at the Commission's order rate of 55 cents, and included that figure with the others to reach this total.

Q. And I say you assumed that the rate of 55 cents would not cause any more consumption of gas, or bring any more sales of gas to your concern than the 75-cent rate?

A. Well, I would not call it an assumption. That is my opinion and judgment.

Q. Well, what would you call it?

A. That is my opinion and judgment on what this revenue would have been.

* * * * * * *

[fol. 255] Monday, March 12, 1934

Afternoon Session: 2:00 P. M.

H. E. Womack, resumed the witness stand, and continued his testimony on cross examination as follows:

Cross-examination resumed.

Questions by Mr. Bobbitt:

Q. Mr. Womack, have you your Exhibit 1 there, please, sir?

A. Yes.

Q. And Exhibit 3?

A. Yes.

Q. Exhibit 1, under the head of Residential Sales, I believe your exhibit shows that for the year ended December 31, 1932 your gross revenue was $119,489.41; is that correct?

A. Derived from residential business, it is.

Q. Yes, derived from residential business; and for the year ended December 31, 1933, the gross revenue derived from residential business was $110,686.26?

A. Yes.

Q. Is that correct?

A. Yes.

Q. That represents a loss in the difference of those figures for the years 1932 and 1933?

A. Yes.

[fol 256] Q. A decrease?

A. Yes; the revenue was less in 1933 for residential users of gas.

Q. In the amount of the difference of those figures?

A. Yes.

Q. Likewise for those two years there was a decrease in the number of consumers—number of meters taking gas—residential consumers; isn't that correct?

A. How is that?

Q. What I am getting at is the number of residential meters there December 31, 1932, and the number on December 31, 1933, the number of meters for residential consumers?

A. What do you want, just the month of December only?

Q. I want the number of meters in use serving gas to residential consumers on December 31, 1932, or the average for the year that you set up at that time?

A. Which do you want?

Q. Either one or both, whichever is the most convenient there.

A. The average for the year 1932 was 4214; the average for the year 1933 was 4177.

Q. There is a decrease in the number of meters to the extent of the difference in those figures?

A. A slight decrease—37.

. . . . . .

[fol. 257] Q. Now, Mr. Womack, turn to Exhibit 3 at page 4, if you please, a moment. On the question of Operating Expenses for the twelve months ended December 31, 1933, that exhibit there undertakes, as I understand, to give the amount of such expenses allocated to Laredo for that period?

A. It gives the amount that is apportioned or that has been distributed to Laredo for that period.

Q. For that period?

A. Yes.

Q. Let's get this clear. What is the distributing company that is distributing gas in the City of Laredo? What is the name of that concern?

[fol. 258] A. United Gas Public Service Company.

Q. Well, isn't there a subsidiary, Texas Border Gas Company?

A. No.

Q. It took the place of the Texas Border Gas Company—the United Gas Public Service Company took the place of the Texas Border Gas Company as a distributor in the City?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did the United Gas Public Service Company likewise take the place of the South Texas Gas Company—the transmission company?

A. Yes.

Q. So those two companies are out of existence; is that right?

A. Yes.

Q. And the United Gas Public Service Company is doing all of the work that they formerly did; is that correct?

A. Yes.

Q. What is the total amount, Mr. Womack, of the Supervision and Consultation fees paid by the United Gas Public Service Company for the period—for the twelve months ending December 31, 1933, of which Laredo pays a part?

A. $116,578.87 for 1933.

Q. What is that figure?

A. $116,578.87.

Q. That is the total amount for that item paid by the [fol. 259] United Gas Public Service Company?

A. It is.

Q. And the amount allocated to the City of Laredo was as set up in this exhibit, $2,376.61?

A. That is correct.

Q. To what company were those Supervision and Consultation Fees paid?

A. Electric Bond & Share Company.

Q. Electric Bond & Share Company?

A. Yes.

Q. If I understand you then, the United Gas Public Service Company, in connection with its Laredo business, paid the sum of $2,376.61 to the Electric Bond & Share for those services for the year stated?

A. The figure $2,376.61 apportioned to the City of Laredo is a part of that total payment of $116,578.87.

Q. What services did the Electric Bond & Share Company render to the company for the benefit of Laredo in that respect?

A. I am unable to tell you the particular service for any certain town. It is not carried on the records separately for each town in the amount of service rendered for a particular town.

Q. How is it carried? Explain to us as best you can as Auditor, how it is carried, and for what purposes it is stated it is paid on the books of the company?

[fol. 260] A. It is carried in total as an expense on the ledgers in the Houston office.

Q. For what service?

A. I am unable to tell you definitely the services that are rendered in accordance with the terms of that contract.

Q. By whom are the services rendered?

A. I still am unable to tell you definitely the men who do render those services.

Q. Do you know the salaries paid to those men who are there for the purpose of rendering those services?

A. I do not.

Q. You do not know?

A. No, sir.

Q. Their salaries are not reflected upon the books of the United Gas Public Service Company?

A. They are not.

Q. All you have is the amount of money paid to the Electric Bond & Share Company for those services?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. There are officers of the United Gas Public Service Company, are there not, who have that information and figures?

A. I presume so.

Q. Who do you think has it—you are the Auditor of the company?

A. I would imagine that some of the officers do, but [fols. 261-262] which one, I do not know. I don't have that myself, and I don't know just who does.

. . . . . .

[fol. 263] Q. Going back a moment, Mr. Womack, to the industrial consumption of gas in the City of Laredo, along the lines we were asking you about this morning, I believe you testified that you did not know the charge per thousand cubic feet now being made by your company for industrial gas consumption in the City of Laredo?

A. I believe my statement was that there are a number of different rates in effect at this time, so far as industrial business is concerned in the City of Laredo. Now, just offhand, I can not give you those rates. I stated to you this morning that I did not have the average rate. I can compute that, as I told you this morning, for you.

Q. Do you mind doing that?

A. No. Do you want that for the year 1933?

Q. Yes, and 1932 also, if you will.

A. All right; 1932 and 1933.

Q. Yes. Now, the same facilities, as to transmission properties and metering through the city gate, Mr. Womack, that the company uses for serving the domestic consumers, is used for serving industrial consumers; isn't that true?

A. The same city gate meter is used.

Q. And the same transmission lines?

[fol. 264] A. And the same transmission lines, but not all the same services.

Q. What do you mean by the same services?

A. I believe you are the one that used the term services.

Q. I said facilities.

A. Facilities, then.

Q. You use the same transmission lines in taking gas from the fields to the city gate to serve both domestic, industrial and commercial consumers?

A. Yes.

Q. And you have to maintain and do maintain those facilities to serve the domestic consumers, whether you had any large amount or a small amount of industrial consumers?

A. The pipe lines would necessarily have to be maintained.

Q. Well, as I say, you maintain the transmission lines and all the facilities there that are necessary to serve the domestic customers?

A. Yes.

Q. Which is your main business?

A. Yes.

Q. And you have to maintain those as you are now maintaining them without regard to the domestic consumption or sales of gas?

A. I don't know just what you mean by domestic.

Q. Industrial, I mean—I beg your pardon.

A. Well, there are some facilities that are used for industrial only.

Q. I understand that, but your transmission properties?

[fol. 265] A. Yes, that is right.

Q. Your transmission lines are the same?

A. Yes.

Q. And you buy gas in the field there at three and four and five cents——

A. I didn't say anything about any three-cent gas. I gave one of you gentlemen, I believe, some prices that the company pays for the gas it buys, at four cents and some at five.

Q. Well, isn't it true—I will ask you now, isn't it true that your company has recently executed two-year contracts in the Jennings field for purchased gas from independent gas producers at three cents a thousand?

Mr. Coates: Now, just a moment; we object to that because it is not confined to the property nor to the operations which are shown here to be used and useful for service in the City of Laredo. He has said, and the testimony is that within this Laredo area the price paid for purchased gas on these facilities was four and five cents. Now, he is extending beyond those fields, into areas which are not set up here and is asking for prices in those fields.

The Court: I don't think, gentlemen, that we should go into any matters except those which concern Laredo and the Laredo district.

Mr. Bobbitt: It does concern Laredo and the Laredo district.

The Court: If you will so confine your question, I will [fol. 266] permit the witness to answer.

A. The company does not purchase any gas for delivery to Laredo at a price below four cents per M. C. F.

Q. It doesn't?

A. It does not.

Q. It buys gas in the Jennings field and in the Carolina-Texas field, from which fields you do serve Laredo. The company buys gas there at three cents, doesn't it?

Mr. Coates: We make the same objection, because he has already given the answer which relates to Laredo.

Mr. Bobbitt: If the court please, they are buying gas out of the same field there, at three, four and five cents. He says four and five. If I understand from the witness now, he undertakes to say that they are selling us the four cent gas, and I want to know if he doesn't sell us also some of the three cent gas.

The Court: And he says no.

Mr. Bobbitt: That's what I want to find out about.

The Court: He says he does not sell you three cent gas, and he has answered that question this morning, and this afternoon twice. Isn't that correct?

A. That is correct.

The Court: You have answered that twice now?

A. Yes.

Q. Then, no three cent gas purchased in the Carolina-Texas field or the Jennings field or any other field in the [fol. 267] Laredo area goes to the City of Laredo?

A. That is correct.

Q. That three cent gas from those fields goes where?

A. From what fields?

Q. From the Carolina-Tex field and the Jennings field.

A. There is no three cent gas in the Carolina-Texas field at all.

Q. Well, then, from the Jennings field.

A. In the Jennings field, if you limit yourself directly to what I know as the Jennings field, there is no three cent gas in it, either.

Q. Well, the Escobas field is about three or four miles from that Jennings field, isn't it. It is generally known as the Escobas field, where you are buying gas at three cents?

Mr. Coates: Are you testifying now? We object to it.

Mr. Bobbitt: Well, I probably made a statement——

The Court: I think the witness understands the attorney; and the jury understands of course that Mr. Bobbitt is not testifying.

A. I do not believe any gas is being taken at all from the field near Escobas; at least, not what I know as that field. There may be——

Q. Well, we can get that from somebody else, who is familiar with it.

A. Yes.

Q. Anyhow, you are buying gas there at three and four cents, in that field, that you are selling to Laredo?

[fol. 268] A. What was that question. (Question is read.)

Q. I mean at four and five cents?

A. Yes.

Q. And you have the facilities already in use and in operation to serve domestic consumers, the same pipe lines, that transport the industrial gas to Laredo transport the domestic gas also?

The Court: Do you mean residential gas, when you say domestic?

Q. Yes. Yes, the same pipe line facilities transport all the gas, both residential and industrial?

A. Yes, the same pipe line facilities transport all the gas.

Q. What is the capacity of your transmission line from the field to the Laredo city gate?

A. I don't know.

Q. Approximately?

A. I don't know that.

Q. Well, it will transport several times more gas than you are now transporting and selling, wouldn't it?

Mr. Coates: If you know.

A. I don't know that.

Q. What is the size of the pipe line, the transmission line from the Pescadito Junction to the City gate?

Mr. Coates: If you know.

Q. Yes, if you know. Mr. Coates, if you know what is [fol. 269] the size of that transmission pipe——

Mr. Coates: Well, I don't know; there are different sizes in that line; there is one size down to Jennings, and——

Mr. Bobbitt: I am talking about from Pescadito Junction to the City gate.

Mr. Coates: I don't know, but we will have a witness on here who can tell you. And likewise there will be an engineering witness on here who can compute the capacity of those lines for you. This witness has not qualified to testify on that.

A. I don't know the size of that line.

The Court: He says he doesn't know.

Q. All right; you don't know. So far as you know, there has never been any question about that capacity of that line being able to carry all the gas you can sell at the consuming end of it?

A. No, so far as I know, it is able to carry all the gas we sell.

Q. Now, then, having the facilities there and in operation, Mr. Womack, which are required to transport and furnish the gas to the domestic consumers——

The Court: What do you mean by domestic; I want to understand you—do you mean to use that term continuously?

Mr. Bobbitt: I mean to say residential, by that term.

The Court: Let's confine it to residential. I understand the term domestic to mean all the consumers in the city of Laredo.

[fol. 270] Mr. Lange: No, if the Court please, the term domestic means only the residential; and it was used in the record before the Railroad Commission in that manner and has been used interchangeably with the term residential. Those two terms mean the same thing.

Mr. Fitzhugh: The terms residential and domestic as used in the Commission's orders, are synonymous.

The Court: If that is what you are talking about, I will understand it from here on out, but I wanted to know what you meant.

Mr. Lange: That is the meaning of it.

The Court: To me, as a legal term, it is not synonymous, but if you mean it that way, I will take it that way.

Mr. Bobbitt:

Q. Well, as I say, you have the transmission facilities, Mr. Womack, that are necessary to transport and deliver

gas from the field to the city gate for residential consumption. You have those facilities—they are there?

A. Yes.

Q. And the same facilities are used to transport gas for industrial consumption. That is correct, isn't it?

A. The same pipe line facilities, yes.

Q. And the same measuring facilities, at the city gate?

A. The city gate measuring station is the same.

Q. And the gas costs you in the field four and five cents per thousand cubic feet?

A. Yes, that is the price that is paid to the producer [fol. 271] of the gas for it.

Q. Yes, and you could sell gas for industrial purposes in the City of Laredo for, say, ten cents a thousand, and make the difference in profit, in the purchase price of it, or four and five cents, and a small amount fof the transportation expense, could you not?

Mr. Coates: We object to that as speculative and not bearing on any issue in this case—what we could do if we had the industrial consumer there to do it.

The Court: I think it is objectionable, Mr. Bobbitt.

Mr. Bobbitt: It may be, but the thing we have in mind here, they have complained very much about the loss of industrial consumers, and we have not yet been able to show what they charged the industrial consumers of gas.

The Court: The question you just asked can not illustrate what you are now talking about, in my judgment, Mr. Bobbitt, and the objection is to the question you have just asked.

Q. Mr. Womack, from your experience, that you testified about this morning, as a gas executive, from your experience in the sales of gas and your connection with this company, isn't it true that your industrial consumption increases with a decrease in the price for industrial gas?

A. A number of circumstances would enter into that. In the first place, there would have to be the potential industrial business there, and that would have to be there whether [fol. 272] the price was one cent or a dollar.

Mr. Coates: We think the question is not material to what he is seeking to get. We do think he is at perfect liberty to ask how many industrial consumers there are in Laredo that we do not serve.

The Court: He can ask him as an expert.

Q. What was my question now? (Last question and answer is read.)

A. The amount of the industrial customers' business would be a factor in there. Everything being absolutely equal, and if an industrial consumer could increase his business by buying more gas, then if he would get the additional amount of gas at a cheaper rate, he would have more business and would buy more gas.

Q. Let's see if I can't make myself clear on that now. Take, for instance, the Haussmann Packing Company, one of your customers that formerly used a large amount of industrial gas?

A. Yes.

Q. That company quit using industrial gas and went to another kind of fuel. That is true, isn't it?

The Court: I believe he said this morning that he did not know.

Q. He said they quit using it. Now, if you furnished gas to him for fuel out there at ten cents a thousand, instead of twenty cents, for instance, don't you think you would have a market there that you do not now have?

Mr. Coates: We must object to that as entirely too speculative.

[fol. 273] The Court: I don't know; this witness lived down there and he may know just how to answer that. I will let him answer the question.

Mr. Coates: Note our exception.

A. Will you read the question please?

(Whereupon, the last question above was read to the witness: "Now, if you furnished gas to him for fuel out there at ten cents a thousand, instead of twenty, for instance, don't you think you would have a market there that you do not now have?")

A. I don't know.

Q. You don't know. What do you think about it, as an expert in the gas business?

A. I don't know whether the Hausmann Packing Company is operating to full capacity or whether they are operating one day of the week, or what their business is now, if they have any, compared to what it was say two or three or four years ago. I am not familiar with the Hausmann's Packing Company's business.

Q. Let me ask you this question, then, Mr. Womack: Do you think that you will get the number of industrial consumers and the volume of industrial consumption of gas at twenty cents a thousand that you would get at ten cents?

A. No, I do not.

Q. So the increased price of gas is a real factor in the amount of sales?

A. If it gets to the point where, to me, that is an unreasonable increase. That is a hundred percent increase, that you [fol. 274] have mentioned. If you increase your gas rates 100 percent, or decrease them 100 percent, that will be a factor.

Q. Yes, and a material factor?

A. Well, it would be a factor.

Q. A material factor, yes. Now, your concern, inasmuch as it must maintain these facilities that I inquired about, to serve the residential consumers using the same facilities to transport gas for industrial consumers, could make a profit on gas sold to industrial consumers at ten cents a thousand, could they not?

Mr. Coates: Now, that is certainly too speculative, and it is not an accounting question. It is a hypothetical question, sought to be put to this witness without giving him all the factors and the many and various factors which would enter in and properly enter into a question and the answer to a question of that sort.

Mr. Bobbitt: Well, I don't think——

The Court: Wait just a moment • • • Now, as I understand this question—Read it please, Mr. Reporter.

(Question is read to the Court.)

Mr. Coates: Of course that apparently requires him to treat the industrial gas simply as a by-product, without giving the basis on which the expenses would be shared, or anything of that sort.

The Court: Gentlemen, I understand the question. I am going to let the witness answer it, within these limits. That [fol. 275] you take into consideration, as an auditor and an expert accountant of the company, the costs, as you know them, as they affect this situation, and say whether or not they could make a profit through such a sale to the industrial consumers.

A. I don't know.

Q. You don't know? Now, could I ask one or two other questions along that line?

The Court: You may ask them; I may not let him answer them.

Q. You don't know whether they can make money at ten cents or not. And the gas costs four and five cents in the field?

A. Yes.

Q. That is correct; and you are using the same transmission facilities. Now, what additional expenses, other than the purchase price of gas—what additional expense is laid on the company in transporting this gas for industrial sales in the City of Laredo?

A. The expense is not carried by classes of sales.

Q. Tell us how it is carried, and what additional expense would the company be put to, to get that ten cents industrial gas to the city of Laredo.

A. The pipe line facilities, as I have stated, of course carry gas, regardless of the purpose of the sale or the class of the sale that it may be.

Q. Mr. Womack, let me ask this question: I don't want to break in, if you are not through, but you are an expert along [fol. 276] these lines, and isn't it true that about one cent or one cent and a half per thousand cubic feet, in addition to the purchase price of the gas, would cover the transportation expense and deliver it to the city gate for industrial purposes?

Mr. Coates: Now, if the Court please, we object to it again, because it does not state all of the factors. Naturally, if you have a pipe line there, you have certain charges that do not vary with the amount of volume of gas that passes through it, and if you just passed a thousand cubic feet of gas through that a year, your expenses would be relatively the same as if you passed a number of thousand cubic feet through it in the same period. That is, those expenses will remain relatively fixed, regardless of the volume, and he is not giving, in this hypothetical question, all of the factors which would enable this witness to give an intelligent answer, and we object to it for that reason.

The Court: But the court said he would require the witness to take into consideration all of the factors which would enter into the costs, and answer it in the light of that con-

sideration; and the court now instructs the witness to answer the question in that light.

Mr. Bobbitt: As I recall the question, he says that the costs are not carried in classes, but——

The Court: The question was, it would not cost more than one and a half cents per thousand cubic feet, in addition to the purchase price, to get it to the city gate from the field [fols. 277-288] where it is purchased.

Mr. Coates: But there is no volume of gas stated; that is, the number of thousands of cubic feet of gas that passes through there, which would control.

Mr. Bobbitt: That is getting off, I think, into a fine point of theory——

Mr. Coates: No, it is not.

Mr. Bobbitt: There is nothing complicated about this, if we really understand it.

The Court: Gentlemen, we have passed on the question.

Q. Read the question, please.

(The following question was read to the witness: "Isn't it true that about one cent or one cent and a half per thousand cubic feet, in addition to the purchase price of the gas, would cover the transportation expense and deliver it to the city gate for industrial purposes?")

A. The operating expenses and maintenance expenses of the pipe line are not separated as between different classes of sales. I have not attempted to make such a separation, and I therefore could not say what the additional cost of delivering gas for industrial purposes would be.

* * * * * * *

[fol. 289] Questions by Mr. Bobbitt:

Q. Mr. Womack, I believe you testified that you purchased the gas in the field for transportation to Laredo and sale there, at four and five cents per thousand cubic feet?

A. Yes, sir.

Q. You transport that gas through the same lines and [fol. 290] through the same facilities that are used for transporting gas to residential consumers?

A. From the fields to the Laredo city gate.

Q. To the Laredo city gate?

A. Yes, sir.

Q. Are you acquainted with the properties there of the Central Power & Light Company, in the city of Laredo?

A. I have never seen the industrial installation or what you might term a meter for delivering gas to the Central Power & Light Company.

Q. You are familiar with their properties there, aren't you?

A. I know that they have an old building there.

Q. You are now serving gas to a limited extent to the Central Power & Light plant—I believe you testified to that.

A. Yes, we are——

Q. You are now serving——

A. I don't know whether it is to their plant or to their office, or where it is.

Q. You are now hooked up and are now serving gas to the Central Power & Light Company?

A. We do sell them some gas.

Q. Yes, sir. That is what is termed industrial gas——

A. Yes.

Q. —that is, gas for industrial purposes?

A. Yes.

Q. Now, I want to ask you, Mr. Womack, what additional [fol. 291] cost to the purchase price of gas is incurred in the furnishing of gas through those transmission lines to the Central Power & Light Company, other than the purchase price of gas?

Mr. Coates: To which the defendant here objects because no proper predicate is laid for this question by a showing, or evidence even remotely tending to show that the Central Power & Light Company would resume the operation of that plant, and for the further reason that it is too remote, too speculative, and is a hypothetical question put without having the proper predicate laid by testimony already in the record.

The Court: The objection is overruled.

Mr. Coates: Note our exception; and may we have the same bill to all this further testimony?

Mr. Bobbitt: Yes, sir.

The Court: Any further questions touching the same items.

Mr. Bobbitt: Yes, sir. Read the question, please.

(The Reporter thereupon read the last preceding question as follows: "Now, I want to ask you, Mr. Womack, what

additional cost to the purchase price of gas is incurred in the furnishing of gas through those transmission lines to the Central Power & Light Company, other than the purchase price of gas?")

Mr. Coates: I object for the further reason that no volume is stated in the question, and that is an essential element to [fol. 292] this hypothetical question.

The Court: All right; go ahead.

A. I don't have the expense accounts in the operation nor in the maintenance divided as among the general classes of sales; I don't know what volume the lighting and power plant would use; I don't know the length of that line,—and for those reasons I am unable to tell you what it would cost.

The Court: All right, gentlemen, the witness has answered the question now.

Q. You know the volume that they used heretofore, do you not, in other years? I believe you testified to those amounts, the volumes that they used in other years, and that they have decreased down to practically nothing.

A. I testified as to the revenues derived from sales of gas to that customer, and not to the volume.

Q. Well, you—it is a simple matter of calculation from the amount to the volume, isn't it?

A. I can get the volume of M. C. F. for you. I don't have it here; I have it at the hotel.

Q. Can't you give us approximately, Mr. Womack, what additional cost would be incurred to the company for delivering that industrial gas, in addition to the purchase price of it?

Mr. Coates: That is objected to for the same reason, and for the further reason that it calls for a simple speculation from an accountant here.

[fols. 293-349] The Court: You asked him to approximate it?

Mr. Bobbitt: Yes, sir, give it approximately. He is an expert—an expert accountant. I admit he is an expert accountant, and a good witness.

The Court: This question doesn't deal with volumes of gas, but deals with costs. If you can answer it, Mr. Witness, I will let you answer.

A. I don't have the maintenance and operating costs divided as among all different classes of business that the

company has—that is, as between residential, commercial and industrial, or the other classes that it has. Without that division I would certainly be unable to answer your question. I wouldn't want to even approximate it because it might just be a wild guess.

* * * * * * *

[fol. 350] Testimony of W. W. Stein

Q. Yes, sir. Now, you were interrogated yesterday, Mr. Stein, about a contract that is now in evidence, entitled "Agreement Between Southern Gas Company and South Texas Gas Company". You testified at some length yesterday on direct examination about the making of this contract, dated December 1, 1929.

Mr. Coates: It is November, isn't it, Bob?

Mr. Bobbitt: Yes, November 1st, I see there has been a change there,—1929.

Q. (Reading.) "by and between Southern Gas Company, a Delaware corporation, * * * and South Texas Gas Company, a Delaware corporation",—and the contract shows that you were then Vice-President of the South Texas Gas Company.

A. That is correct.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And you continued in that capacity until it was—Do you continue in that capacity at the present time?

A. No.

Q. Has that company been dissolved?

A. It has,——

Q. It has?

A. —I think.

Q. And the Southern Gas Company, of which Mr. L. A. Nordan was Vice-President?

A. Yes.

[fol. 351] Q. Both of those companies were owned by the Moody-Seagraves interests, were they not—the stock in those companies?

A. At one time they were; later they were owned by other interests.

Q. Well, they were so owned on the first of November, 1929, when you made this contract?

A. Yes, sir.

Q. Moody-Seagraves owned both companies?

A. Yes, sir.

Mr. Coates: Mr. Bobbitt, will you come up here just a minute

(Counsel confer with Court in undertones, off the record.)

The Court: All right.

Q. Mr. Stein, at the date of the execution of this contract I am inquiring about, between Southern Gas Company and South Texas Gas Company, the Moody-Seagraves interests owned the stock in both companies—the controlling stock in both companies, if you remember?

A. It was known at that time as being under the management of the Moody-Seagraves interest.

Q. Well, they controlled the stock—they owned and controlled and voted the stock of the corporations, didn't they?

A. I don't know that.

Q. You don't know that, and you were Vice-President of the company?

[fol. 352] A. I didn't attend the stockholders' meetings.

Q. You didn't attend the stockholders' meetings?

A. No, sir, I had other matters to attend to.

Q. To the best of your knowledge, that is true, isn't it, Mr. Stein?

A. I don't know.

Q. Well, Mr. Stein, who was President of your—of the concern of which you were Vice-President, South Texas Gas Company—who was President of that company at that time.

A. Mr. O. R. Seagraves.

Q. Mr. O. R. Seagraves. He is the head of the Moody-Seagraves concern?

A. Yes, sir.

Q. Who was President, Mr. Stein, of the Southern Gas Company at that time?

A. I don't know.

Q. You don't know. Isn't it true that Mr. O. R. Seagraves was president of that company?

A. I am not sure. I was connected with the South Texas Gas, and not with the Southern.

Q. Well, you don't know about that. I just want to know what you know about.

A. I don't know.

Q. You don't know who the president of the Southern Gas Company was?

Mr. Coates: Mr. Bobbitt, if this will meet with the infor-
[fol. 353] mation that you are trying to get, we are willing to stipulate with you that at the time this contract was entered into the Moody-Seagraves interests owned the control—that is, more than fifty per cent, but not all, of the stock of both Southern Gas Company and South Texas Gas Company.

Mr. Bobbitt: And that Mr. Seagraves was President of both companies?

Mr. Coates: Off the record.

(Discussion off the record between counsel and Court is here omitted.)

Q. In making this contract, Mr. Stein, as Vice-President of the South Texas Gas Company, you testified yesterday that you made the very best trade you could for your company, in acquiring gas in the Carolina-Texas field under this contract with the Southern Gas Company, of which Mr. Nordan was Vice-President—that is correct, isn't it—in 1929, when this contract was made?

A. I made a very good contract, I think.

Q. You made a good contract then, I believe you testified yesterday?

A. Yes.

Q. And it is a good contract now, you have stated?

A. It is a good contract.

Q. And would you make—, I am just asking you now in connection with your testimony yesterday—would you make the same contract now that you made then?

[fol. 354] A. If the circumstances were the same, I certainly would.

Q. Yes, sir. And you—I believe you testified you dealt at some length with Mr. Nordan in making this trade, under which you contracted to pay—your company or the one you were acting for—the South Texas Gas Company—agreed to pay to the Southern Gas Company six cents per thousand for gas in the Carolina-Texas field?

A. That included the well mouth price and the gathering charges.

Q. Well, whatever it included, you made that contract?

A. —at our lines. Yes.

Q. Yes. I don't believe you testified yesterday that you inquired of Mr. Nordan, for his company, the price that he would take for the gathering system. Did you go into that?

A. When I found out—I asked him if it could be sold, we could buy it, and when he said it would not be sold that ended the prospects of buying it; so we didn't discuss price.

Q. And he said that it couldn't be sold?

A. He said that it couldn't readily be sold under the mortgage that existed on that property. That was the understanding I had from him.

Q. You didn't ask him the price, of course, since——

A. Why, no.

Q. If it could be sold, you didn't ask him the price—you didn't go into that detail?

A. If it couldn't be sold, why, I didn't see any necessity [fol. 355] of talking about price.

Q. Yes. Did you—do you remember whether—did you ask Mr. Seagraves anything about the situation, the President of the company?

A. I did not; I did not discuss the matter with him at all.

Q. Did you have any other directors of the concern—who were the directors of the South Texas Gas Company?

A. There were a number; I don't remember just who they were.

Q. Do you remember any of them?

A. Mr. Seagraves and Mr. Moody are the only ones that I remember.

Q. You didn't advise with any of the directors?

A. I did not.

Q. Or the President?

A. I did not.

Q. Yes, sir. As a matter of fact, Mr. Stein, that contract was made between two concerns which were owned by the same parties—isn't that true?

A. Generally speaking, yes, but——

The Court: Wasn't that fully covered by your stipulation a while ago?

Mr. Bobbitt: Yes, sir.

Mr. Coates: I think so.

Q. And do you remember, in the writing of the contract, whether the same attorneys represented both parties in [fol. 356] the drawing of the contract?

A. They had the same common attorneys.

Q. Both companies had the same attorneys?

A. Yes.

Q. And according to your best information the attorneys represented both parties in the drawing of this contract?

A. Yes.

Q. Now, Mr. Stein, do you recall a contract made on April 10, 1928, between the South Texas Gas Company, in which it agreed to purchase from South Texas Production Company certain gas in the Carolina-Tex field?

A. There was a contract.

Q. Have you a copy of that contract?

A. I have not.

Q. Could you secure it for us, Mr. Stein?

A. I will try to. I don't know whether I can or not.

Mr. Coates: I don't know what contract you are talking about; but is it material here?

The Court: I don't know. He has given you the date, and so forth. I don't know whether it is material or not.

Mr. Bobbitt: Yes, sir, we think it is very material, and we would like to see the contract, if the Court please. They offered one along this line, and we would like to——

Mr. Coates: Mr. Bobbitt, will you come here, please.

[fol. 357] (Attorneys confer with Court in undertones, off the record.)

Q. The contract dated April 10, 1928, between South Texas Gas Company and the South Texas Production Company, providing for the purchase of gas at eight cents per thousand cubic feet.

Mr. Coates: We believe that the contract is the best evidence of its contents and what it stipulates.

Mr. Bobbitt: That is correct. I was just trying to identify it, so it would enable him to find which contract I had in mind.

Mr. Coates: It is sufficiently identified. We will get it.

The Court: Well, he understands what you are talking about.

Mr. Bobbitt: Yes, sir.

Q. And also, Mr. Stein, this original contract as amended —it was amended on November 30, 1929, and to enable you to find that amendment—I know you have a mass of contracts and records, many contracts specifying—beginning December 1, 1929, the purchaser shall pay to the seller for all natural gas delivered under said agreement of April 14, 1928, at a certain rate per thousand cubic feet. I don't care now—that is the amendment.

A. Of April 14th?

Q. Yes. We want that original contract and the amend-
[fol. 358] ment, if you please.

A. All right.

Q. Now, Mr. Stein, taking up these matters you were interrogated about in reverse order, I didn't understand clearly, and I am not sure the court and jury did, your explanation of what you consider an unprofitable customer.

A. What didn't you understand about it?

Q. I didn't understand anything about it; will you just tell us, in language that we laymen may understand, what you mean by unprofitable customers, in the taking of residential gas in the City of Laredo?

A. An unprofitable customer, in my judgment, is a customer who does not pay in enough money to the company to take care of his proportionate share of the cost of serving him.

Q. You are speaking, of course, of residential customers?

A. Any customer that would pay in sufficient.

Q. Well now, you have a minimum service charge to all residential customers, haven't you, Mr. Stein?

A. Yes.

Q. And before any resident, citizen or anybody can secure gas for use in their residence, they must pay a minimum amount to the company to start the service?

A. Yes.

Q. And in addition to that, they must put up a deposit in cash money, of $5.00, isn't it, for residential customers?

A. The deposit in most cases is $5.00 for a residential customer.

Q. And it is never under that, is it?

A. Sometimes there is no deposit required.

[fol. 359] Q. That is very seldom, isn't it?

A. It has happened.

Q. The general policy is to charge the residential customers a minimum deposit of $5.00, isn't it?

A. Where we don't have sufficient credit experience or records, or on our records enough data to warrant giving him the deposit, then we——

Q. I didn't ask you about that.

Mr. Coates: I think that is in answer to his question; his question was whether he did not require a deposit of all the customers——

The Court: And he said they did not.

Mr. Coates: He is now explaining that they do not require them where they have a good credit rating.

Q. Now, Mr. Stein, how many customers do you have that you are serving natural gas to, that you have not required a cash deposit of, in connection with the service?

A. I don't know.

Mr. Coates: Can you give it approximately?

A. I could not give it approximately, no; it would be a guess.

Q. Isn't it true that it is but a very few?

A. No, there is quite a number, and I would like to get that information for you.

Q. That is what I am asking for and I wish you would.

A. But I do not know now, because I did not know that information would be required.

[fol. 360] Q. On the others—on the commercial and the industrials, it goes up considerably, doesn't it?

A. The commercial and industrial consumers, where the credit is not established, we try to secure a deposit to cover an estimated 60 days gas bill.

Q. Sometimes that is $25.00 and sometimes it's $50.00 and sometimes it is $100.00 deposit, depending on the amount of gas that probably will be used for sixty days?

A. Whatever will be the requirement in each particular case.

Q. And a minimum charge for gas in each instance?

A. We have some customers who have no minimum charge.

Q. You don't know how many?

A. Not in the city of Laredo.

Q. And you can not even approximate that?

A. They are outside the city of Laredo.

Q. What do you mean—all of them in the City of Laredo do have a minimum charge?

A. I believe so.

Q. Well, don't you know that, Mr. Stein?

A. I don't know that for certain because I would have to check and see definitely. They should have a minimum charge.

Q. Now, Mr. Stein, in connection with your conference with Mr. Neiswanger of the Central Power & Light Company that Mr. Coates asked you about, in 1929, you learned of their plans, I believe you stated, to install a high power line into the City of Laredo?

[fol. 361] A. That line was a part of the plans at that time.

Q. What I am getting at, you conferred with him, according to your testimony there, to try and get him to continue using gas?

A. I did.

Q. What was he then paying for gas for that plant?

A. The rate for the boilers was 20 cents net per thousand cubic feet for the first ten million cubic feet used per month.

Q. Twenty cents a thousand cubic feet; is that right?

A. Yes, for the first ten million cubic feet used per month.

Q. All right.

A. And 18 cents net per thousand cubic feet for all gas consumed in the boilers, over the first ten million cubic feet of gas used per month.

Q. All right; anything else?

A. What do you mean?

Q. Well, that was in 1929?

A. Yes.

Q. That is the price established in 1929?

A. Yes.

Q. Prior to that time, it was 16 cents, wasn't it?

A. It was 20 cents a thousand for the first ten million cubic feet, and 16 cents per thousand cubic feet for all gas over the first ten million cubic feet used per month.

Q. When did that price go into effect?

A. Which price?

Q. The one you just named?

[fol. 362] A. I don't remember the date.

Q. Do you know how long it continued in effect?

A. No, I don't, offhand.

Q. You raised the price, in 1929, didn't you, after these properties were acquired by these other corporations that

you testified about? You raised the price of gas to the Central Power & Light Company, at Laredo?

A. Yes, nearly sixteen months after.

Q. What was the price prior to that time that you charged the Central Power & Light Company?

A. Prior to what time, please?

Q. Prior to the time you established the 20 cents price and the 16 cents price?

A. I would have to look back to the records for that.

Q. Don't you remember approximately what it was?

A. I am not sure.

Q. Well, you have had a good deal of • • • there was quite a controversy there; you were losing a big customer for your gas company, weren't you?

A. We were losing a big customer?

Q. Yes, weren't you losing a big customer, if the Central Power & Light Company cut off its business?

A. The rate had nothing to do with it.

Q. I didn't ask you about the rate; I asked you if you were not about to lose a big customer.

A. The prospects were that we would eventually lose them.

[fol. 363] Q. That you would lose them; and it was your business to sell gas?

—. —.

A. To sell all the gas you could, as you testified in answer to Mr. Coates questions?

A. It was.

Q. And you were very much concerned about not losing the business of the Central Power & Light Company, were you not?

A. About not losing their business; yes, that is correct.

Q. And the price was twenty cents, and sixteen cents, that you testified about.

A. Prior to January 1, 1929.

Q. And what was it after that?

A. Twenty cents per thousand cubic feet for the first ten million cubic feet used per month, and eighteen cents per thousand cubic feet for all over the first ten million cubic feet used per month.

Q. Did you consider reducing the price below that twenty cents and sixteen cents, in an effort to hold that business?

A. We did.

Q. And did you reduce it?

A. We could not hold the business.

Q. I asked you did you reduce the price.

A. We did not.

Q. Now, Mr. Stein, let me ask you this question: You are familiar with this map are you not?

A. I have seen it.

[fol. 364] Q. This point "2" on here is identified by Mr. Coates as the City of Laredo?

A. Yes.

Q. And this is the station of Bruni, Hebbronville, out in the gas field, right here?

A. Yes.

Q. And this is Jennings field, at point 1?

A. Yes.

Q. And here is the old Reiser field here, isn't it?

A. That is west of Aguilares.

Q. And here is the Cole field, west of Bruni?

A. Yes.

Q. And the Southern Gas Company's lines, in which your company is interested, transports gas from the Cole field here at this point, into San Antonio, does it not?

A. Yes.

Q. And sells gas at San Antonio for industrial purposes, does it not?

A. I don't know who they sell gas; it is probably Public Service Company, I believe.

Q. To the Public Service Company?

A. Yes.

Q. And they likewise transport gas on into New Braunfels, San Marcos and into Austin?

A. Yes.

Q. From this field here?

[fol. 365] A. I don't know where they take it from.

Q. Don't you — that about the concern of which you are the district manager?

A. I am not district manager of that concern for that district.

Q. You are not familiar with the takings of gas by the Southern Gas Company?

A. I am not.

Q. Do you know, Mr. Stein, the price that the Southern Gas Company charges for gas for industrial purposes at San Antonio, 150 miles away?

Mr. Coates: Wait a minute, Mr. Stein. The question is objected to because no proper predicate has been laid for it; because the question does not take into account all of the factors which would determine a fair and reasonable price of gas, and because no proper predicate is laid for the question by showing that the circumstances are substantially like and comparable as to volumes taken and commitments for future volumes taken, the term of the contract and all the other variable circumstances entering into and properly entering into a price of that sort, and the question is objectionable and we object to it for the additional reason that the proper predicate is not laid by showing substantially like and comparable circumstances.

The Court: Read the question, Mr. Reporter.

(Whereupon the question was read to the court: Do you know, Mr. Stein, the price that the Southern Gas Com-
[fol. 366] pany charges for gas for industrial purposes at San Antonio, 150 miles away?)

The Court: Overrule the objection.

Mr. Coates: Note our exception. May we have the same objection to all this line of testimony?

The Court: Yes.

Q. Do you know, Mr. Stein—or I will ask you this question.

The Court: Wait and let him answer that one.

Q. I beg your pardon.

A. I don't know.

Q. You don't know. Now, do you know, Mr. Stein, what your concern charges for gas transported from the Cole field and the Jennings field, through the transmission lines to the City of Houston, 320 miles away?

A. I don't know.

Mr. Coates: The same objection, because it is not shown what circumstances——

The Court: The same action of the court.

Mr. Coates: Note our exception.

Q. You don't know?

A. No.

Q. Do you know the price charged by this concern for industrial gas transported to New Braunfels, and sold to

the power company at New Braunfels for industrial purposes?

A. I do not.

Q. Or to Austin?

A. No.

[fol. 367] Q. You don't know?

A. No.

Q. Do you know the price, Mr. Stein, that your company sells or delivers gas for industrial purposes to the Roma city gate?

Mr. Coates: It is understood our objection goes to all this line of testimony?

The Court: Yes.

Q. —45 miles south of the Jennings field?

A. I don't know what the price is now.

Q. But you are selling a large volume of gas from the Jennings and the Carolina-Texas and the Cole field, transporting that gas to Roma city gate for delivery to Monterrey, Mexico, are you not?

A. I am not operating in that section there.

Q. You do know they are transporting large quantities of gas down there, don't you?

A. By hearsay, I know that they have been taking large quantities of gas to Mexico.

Q. Just by hearsay is all?

A. Well, I don't know myself; I have not checked it.

Q. As district manager, you are not familiar with the operations of this company, and the takings of gas in this district of which you are the manager?

A. I am not manager of that section.

Q. This point, I will mark it X here, shown on the map as Monterrey, in the republic of Mexico; and gas is trans-[fol. 368] ported from these same fields through the Roma gate and into Monterrey, Mexico; you know they deliver gas through that gate and from these fields?

A. From which fields.

Q. The Jennings field; from the east and west Jennings field, and the Carolina-Texas field, the Cole field, or any other field that your company takes gas from.

A. They are not taking any from the Carolina-Texas.

Q. Where are they taking it from?

A. I don't know.

Q. Then how do you know they are not taking it from the Carolina-Texas field?

A. I know that; because I just know that part of it.

Q. Do you know they are not taking it out of the Jennings field?

A. What was that question, please?

Q. Don't you know, as a matter of fact, Mr. Stein, that they are taking gas every day out of the Jennings field, through the Roma city gate, and into Monterrey, Mexico?

A. I believe so.

Q. You know that, don't you?

A. I believe they are; they must be getting it from some section down in there.

Q. But you don't know the price they are charging for it?

A. I don't know now.

Q. You don't know now?

A. No.

[fol. 369] Q. Did you ever know?

A. I did at one time.

Q. What was it at that time?

Mr. Coates: We object further, because he is getting into some past period, and that makes the comparison of prices at some past period with prices at the present date, even more dissimilar, and we repeat all of the objections we have heretofore made to this line of questioning.

The Court: Fix the time, Mr. Bobbitt.

Q. What time in the past did you know about that price; what was that time, when you did know about it?

A. In the beginning of 1930.

Q. In the beginning of 1930? Was it in January, or February, or March?

A. It was during 1930, I would say.

Q. During 1930. Now, what price was paid?

Mr. Coates: The same objection.

The Court: Overrule the objection.

Mr. Coates: Note our exception.

Q. What price was paid?

A. My recollection is that it was 12 cents per thousand cubic feet at that time.

Q. Twelve cents per thousand cubic feet, for gas that went out of the Jennings field and was delivered through

the Roma gate to Monterrey, Mexico. Do you know how long that price was continued?

A. No.

[fol. 370] Q. Don't you know that soon after that price you testified about was in effect; that soon after that time you were talking about, that price was reduced?

A. I don't know about that.

Q. You don't know about that. I believe you testified yesterday that there was no three cent gas purchased by your company that comes to Laredo?

Mr. Coates: He didn't testify to that.

Q. It was the other witness, then. Let me ask you this question, Mr. Stein; you testified yesterday that when you made this six cents contract between the Southern Gas Company and the South Texas Gas Company, of which you were vice president, you were seeking a gas supply?

A. Yes.

Q. In other words, when you made that contract to pay six cents for it in the Carolina-Texas field you were seeking a supply of gas?

A. Yes.

Q. You wanted to assure yourself of a supply, and——

Mr. Coates: Mr. Bobbitt, the record will reflect that the witness said that the six cents covered the well mouth price of the gas and the gathering of the gas and the delivery of the gas to the lines of——

Mr. Bobbitt: I think the record will speak for itself on that.

Mr. Coates: I know it will, but you are seeking to put into [fol. 371] the mouth of this witness a statement that he said that a contract of six cents at the well mouth was a good contract and I am pointing out that is not what the witness said.

Q. The witness testified he made that contract at that time and that it was a good contract, and that he would make it now.

Mr. Coates: That is right.

Mr. Bobbitt: And that was six cents.

Mr. Coates: For the well mouth and gathering——

Mr. Bobbitt: All right; whatever it may be, Mr. Coates.

Q. Now, isn't it true, Mr. Stein, that you have recently, within the last three or six months, made contracts with independent gas producers in the Jennings area, and where

you have tied them up with two year contracts, to take their gas at three cents a thousand?

A. I have not made any such contract.

Q. Do you know anything about those contracts?

A. I have never seen them.

Q. Who makes the contracts for acquiring gas for use in your district, Mr. Stein?

A. I don't know who made those contracts.

Q. Well, you made one here that you testified about?

A. That was in 1929.

Q. Yes; have you made any others?

A. I have not made any in that field since I have been back in Laredo this time.

Q. You have made no purchase contracts for gas since you [fol. 372] came back to Laredo in June of 1932?

A. I have not.

Q. Who makes those purchase contracts for your concern?

A. I don't know. It is handled by a representative of the land and lease department, I think.

Q. Don't you have any idea who it is?

A. I don't know who made the contracts you are speaking about.

Q. Who generally makes them, Mr. Stein? You are the district manager of this concern, and have been connected with it ever since it was organized.

A. It may have been one of several people; I don't know who it was in this case.

Q. Don't they confer with you, as the district manager, when they make these contracts for acquiring this gas? Down there in this district?

A. They did not.

Q. They didn't confer with you?

A. No.

Q. But you do know, as district manager and as an employee of the company, that they are acquiring gas at three cents a thousand in the Jennings field?

A. My knowledge would be from hearsay only.

Mr. Coates: Is it understood that our exception goes to all this line of testimony?

The Court: Yes, if you want it to.

Q. Now, you testified, Mr. Stein, at some length, to the [fol. 373] construction of this electric plant at Laredo, that

is now obsolete; you testified, I believe, it had just built itself up from time to time, and that they would acquire a piece of property this year and a piece of property the next year, and that it's kind of a patch-work?

A. You might call it that.

Q. And for that reason, it has been shut down, and they do not operate it and couldn't operate it?

Mr. Coates: Excuse me a minute, Mr. Bobbitt; are you about to leave this other line of questioning?

Mr. Bobbitt: Which line of questioning?

Mr. Coates: That you have been talking about, seeking to compare the prices of gas at the city of Roma, the city gate, and other prices?

Mr. Bobbitt: We are not about to leave anything, yet. We may ask a lot of questions.

Mr. Coates: Well, at this time, in order to perfect our record and keep it straight in here, we move the Court to strike the testimony and all the testimony, seeking to elicit from this witness comparative prices of gas at the various points shown in the record, for each and all the reasons stated in our objections to those questions.

The Court: Overruled.

Mr. Coates: Note our exception.

The Court: There is no evidence showing what the prices were, and he said he didn't know, all the way along; there [fol. 374] is no testimony to strike.

Q. Now, if I understood your testimony, they were not operating that electric plant at Laredo, because it could not profitably be used to generate power, except for emergency purposes?

A. That is correct, I understand.

Q. That is correct. Now, Mr. Stein, in the construction of this gas concern at Laredo, you have been connected with the company since prior to its organization, haven't you?

The Court: I think that is a question that has been asked and answered several times already.

Q. You built the line, the transmission system, as I understand it, first from the old Reiser field, designated on the map here, as 22 miles to the City of Laredo?

A. The first construction was the line from the Reiser field to the City of Laredo.

Q. And the distribution system within the city?

A. And the distribution system within the city of Laredo, yes.

Q. And the wells in that Reiser field, according to your testimony, got low, and then you struck out for other gas?

A. I have not testified to that in this case.

Q. Well, I beg your pardon. Where was the next piece of construction of transmission line that your company engaged in, after the supply in the Reiser field was being reduced?

A. The line was built to north Laredo, and to South Laredo——

Q. That is for distribution purposes?

A. Yes.

[fol. 375] Q. You built a line up for the irrigation plants, north of here?

A. Yes.

Q. And you built a line down south of here, for the irrigation farms?

A. Yes.

Q. And the industries around?

A. Yes.

Q. That is the next construction?

A. Yes.

Q. The gas got low in the Reiser field, and then what did you do?

A. The line was extended from what is known as Pescadito Junction, and that is point "4", I believe, on the map here——

Q. Yes, that's right.

A. —to what is shown as the Jennings field.

Q. That is down southeast, how many miles—about 26 miles?

A. About 27 miles.

Q. When was that line completed, if you remember?

A. In 1916.

Q. In 1916; and you took gas from the Jennings field, then, from 1916 until what date?

A. Until some time in 1922.

Recess at 10:20 A. M.

* * * * * * *

[fol. 376] (10:25 A.—., After a Recess)

Q. Mr. Stein, you are now looking at a map which bears date December 31, 1931. Is this the same map, Mr. Stein,

that was used in the testimony before the Railroad Commission in connection with the hearing in this case?

A. It looks like the same.

Q. Well, it is the same map, is it not?

A. I think so.

Q. And that map purports—its legend here states, "South Texas Gas Company, Southern Gas Company" certain lines, and another line it says "owned by Southern Gas Company, leased to South Texas Gas Company; another figure on here, "main line check meter stations"; another figure on here, "Town Border meter stations". Do you recognize that map, Mr. Stein, as reflecting the location of the transmission lines and gathering systems in the Jennings-Carolina-Tex. field?

A. As they were at that time.

Q. December 31, 1931. And, in so far as they show, that is the situation at the present time, isn't it?

Mr. Coates: He didn't answer the question, Mr. Bobbitt. As a matter of fact, there have been changes in the gathering line; there are changes from year to year.

Q. I understand that. There have been additions—that is, gathering lines going out and other wells brought in since this map was made; isn't that true?

[fol. 377] A. Yes, sir.

Mr. Coates: Likewise they are connected with wells that are now dead.

Q. The point I have marked One here with a circle is the city of Laredo, and point 2 here that I have marked on the map with a circle is what is known as Pescadito Junction?—that is correct, isn't it?

A. Yes.

Q. Point 3 that I have marked here in the circle down here is what is called Jennings Junction?

A. Yes, sir.

Q. That is located in the old Jennings Field; that is correct, isn't it?

A. Yes, sir.

Q. The line running south down here to No. 4 is the transmission line going to Roma and Monterrey, Mexico?

A. Yes, sir.

Q. Point 5 in this circle on the map which I am making,

that is the meter—what do you call that?—check meter in the Carolina-Tex. field?

A. Meter station.

Q. Meter station in the Carolina-Tex. field, Point 5. And these green figures here near Point 5, that is the Carolina-Tex. gathering system properties?

A. Yes.

Q. That is referred to in the contract that you testified about yesterday afternoon and this morning?

[fol. 378] A. Yes, sir.

Q. And Point 6 over here on the map in this circle, what does that represent?

A. The junction point between the line running from Carolina-Tex. and the line to San Antonio.

Q. Called the Carolina-Tex. Junction?

A. Yes.

Q. That is where your transmission lines from the Carolina-Tex. field join the transmission lines coming from the Jennings Field and go north to San Antonio; that is correct, isn't it?

A. Yes.

Q. And the point which I am marking here on the map in this circle, what does that represent?

A. Jim Hogg Junction.

Q. Jim Hogg Junction. That is in what is called the Jim Hogg gas field?

A. Yes, sir.

Q. And the line running south from Jim Hogg Junction, what does that represent?

A. Running southeast?

Q. Yes.

A. That is a line to the Rio Grande Valley.

Q. Transmission line for gas from this area to the Rio Grande Valley?

A. Yes.

Q. Your concern does not own that transmission line, as I understand it?

[fol. 379] A. I don't think it does.

Q. You sell gas to them?

A. Yes.

Q. Do you know the price you charge for gas here for delivery to the Rio Grande Valley?

A. I don't know.

Mr. Coates: We make the same objection.

Q. Speak out, Mr. Stein, so the last juror can hear you?

A. I don't know.

Q. And the line running over east from Pescadito Junction to Aguilares, which is Point 8, that is your company's transmission line from Pescadito Junction to Aguilares?

A. Yes.

Q. And from there on up to the Carolina-Tex. field, that is your transmission line?

A. Yes, sir.

Q. And this other line here from Point 8, at about the point on the map called Mirando City and Oilton, that is your line running to and serving those little communities?

A. It does now.

Q. Including here the Misko refineries, designated on the map as Misko refineries?

A. I don't know whether they are serving the Misko refineries.

Q. Well, it is shown on the map?

A. Yes.

Q. Now, your first construction, Mr. Stein, I understand you started construction of the distribution system and this [fol. 380] transmission line from Laredo and Reiser here toward Pescadito Junction in April, 1910, according to your history of this concern, I believe?

A. I don't know just the date that it was started.

Q. Let me refresh your memory on that. (Paper handed to witness.)

A. It was in 1910 that the line was built.

Q. Well, wasn't it April, 1910, when you started construction of the distribution system and this transmission line from Laredo to the Reiser field?

A. I don't know whether it was in April or not.

Q. Well, see from the memorandum prepared by you if that is not true.

A. In about April, 1910.

Q. Construction was started?

A. The Border Gas Company was organized.

Q. Yes.

A. But the construction of the line began some time after that.

Q. How long after that?

A. I don't know, because I was not there the day it began.

Q. Some time after April, 1910?

A. Yes, sir.

Q. And I believe it states there on December 23rd, 1910?
A. Yes.
Q. That is when the first gas fire was lighted in a home in Laredo?
A. Yes.
[fol. 381] Q. That is correct?
A. Yes, sir.
Q. That was after the completion of your transmission system?
A. Yes.
Q. And your distribution system in the city of Laredo?
A. Yes.
Q. This line here, Mr. Stein, north of the red transmission line—the black I am marking "X" and "Y" for identification here; what does that represent?
A. The Texas-Mexican Railroad.
Q. The Texas-Mexican Railway practically parallels the transmission line of the old Border Gas Company?
A. It runs in the same direction.
Q. It crosses it a time or two?
A. No, not until it gets past Reiser.
Q. Well, it does cross it there?
A. Or this side of Reiser—near Reiser.
Q. Now, the mileage, Mr. Stein, of this transmission line from Pescadito Junction to the city of Laredo, the map here shows 4.96 miles of twelve inch transmission pipe line; is that correct?
A. Yes, according to the map there.
Q. Well, is that correct?
A. I think so.
Q. And then how many miles of ten-inch lines included in that?
A. May I ask a question? You are asking these questions as of December 31, 1931, only, not as they are today?
Q. Well, I am not so particular about that. Have there [fol. 382] been any changes?
A. I am not sure; I believe there have been some changes since that time; I am not sure of that, because I didn't operate that line at that time.
Q. You are operating it now?
A. No—no.
Q. You are not operating this line now?
A. No, sir.

Q. Who is operating it now?

A. It is operated under the direction of the District Manager of the San Antonio pipe line district.

Mr. Coates: He has testified, Mr. Bobbitt, that he is Manager of Distribution for that area.

Q. Well, you helped construct this line, didn't you?—you have been connected with the company since before it was organized and connected with it yet?

A. I am connected with the United Gas Public Service Company at this time and was connected with the Border Gas Company back in 1910, and its successor companies, up until January, 1931.

Q. Well, let's go back. How many miles of ten-inch pipe are shown in this transmission line from Laredo to Pescadito Junction?—just read it.

A. The map shows 3.835.

Q. Isn't that nearly four miles, in plain language?

Mr. Coates: Mr. Bobbitt, we will stipulate that the distances shown on the map you have there are correct as of December 31, 1931.

[fol. 383] Q. How many miles of eight-inch pipe?

A. I can't see that.

The Court: Well, Mr. Bobbitt, that is stipulated. Why don't you read it yourself?

Mr. Bobbitt: I don't know whether I can read it. The map shows eighty hundredths of a mile of eight-inch line; fifty-one hundredths miles of eight-inch line at another place. It shows forty-seven hundredths miles of ten-inch line at another place. It shows one and seventy-one hundredths miles of ten-inch line at another place.

The Witness: One and seventy hundredths.

Mr. Bobbitt: Yes, one and seventy hundredths. It shows one and eighty-two hundredths miles of eight-inch line at another place.

Q. That is all in the transmission line between Laredo and Pescadito Junction; that is correct?

A. Yes, sir.

Mr. Coates: Now, Mr. Bobbitt, we will likewise stipulate that the sizes of lines and the distances shown on the map with respect to other lines are correct as of the date that map was made.

Q. Do you know what changes, if any, have been made in these lines since December 31, 1931?

A. I don't know.

Q. You don't know?

A. No.

Q. Who would know, connected with the company?

[fol. 384] A. The District Manager of the pipe line department or some representative of the pipe line department.

Q. Well, who is District Manager of the pipe line department?

A. Mr. T. F. Humes of San Antonio.

Q. Is he here, or will he be available?

A. He is not here.

Mr. Coates: He is not here, Mr. Bobbitt. If you want him we will make him available to you.

Mr. Bobbitt: If he is not here, have you some one here, some officer of the company, that can give us that definite information?

Mr. Coates: I think so.

Q. Prior to the time of this new organization, the United Gas Public Service Company, Mr. Stein, as I understand, you were Manager of the distribution system and transmission lines clear on out to the well mouth—it was under your supervision and control as District Manager?

A. For some time prior.

Q. But after the new organization, then somebody else managed the transmission lines—you don't have anything to do with that?

A. I don't have anything to do with it now.

Q. All right. Mr. Stein, do you recall when the transmission line from Pescadito Junction to Jennings Junction was constructed?

A. In 1916.

Q. In 1916?

A. Yes.

[fol. 385] Q. When was the line constructed from Pescadito Junction to the Carolina-Tex. field?

A. Part of that line was constructed in 1922 and another part in 1923.

Q. What part in 1922?

A. The line from Pescadito Junction shown at Point No. 2 to Aguilares and to the old Schott field.

[fol. 386] Q. And when was the balance of it constructed?

A. The line from Aguilares to the Carolina-Texas field was constructed in 1923.

Q. In 1923?

A. Yes, sir.

Q. When was the line constructed from Reiser to the Carolina-Texas field, not Pescadito Junction? Where is Reiser shown? Will you mark the location of Reiser on this map?

A. (Witness places mark on map.) It would be No. 9.

Q. No. 9? Put a circle around it.

A. (Witness places circle around number.)

Q. Now, when was that line constructed from Reiser or the Reiser field to the Carolina-Texas field?

A. From Reiser to Aguilares in 1922 and from Aguilares to the Carolina-Texas field in 1923.

Q. Let's go back to your direct examination. I believe you testified this morning, Mr. Stein, that in your judgment you were serving nearly all of the people in the City of Laredo who were able to use gas?

A. We are serving nearly all of the people that were able to use gas.

Q. Nearly all?

A. Yes.

Q. Don't you know as a fact—don't you know it to be a fact, Mr. Stein, that there are hundreds of residents—resi-[fol. 387] dent citizens of Laredo who are burning mesquite wood for fuel instead of gas?

A. I don't know how many are burning mesquite wood for fuel.

Q. You know that there are many of them burning mesquite wood don't you?

A. I do not know that.

Q. You do not know that?

A. No.

Q. Don't you know that many people who are burning gas for cooking purposes, for instance, are burning wood for other purposes?

A. I don't know that.

Q. You don't know that?

A. No.

Q. Now, I believe you testified that nearly all of the homes in Laredo are—the way they are now constructed were equipped for the use of gas. Now, you just mean nearly all of a certain class or type, do you not, Mr. Stein?

A. We have gas connections and are serving gas to practically every type of home in Laredo.

Q. And don't you know that more than half of the homes that are constructed there—I am talking of the small homes—that there is no consideration given in the construction to the kind of fuel that they will use, and no in-
[fol. 388] stallation of gas facilities at all?

A. I don't know what they consider when they build their homes, but apparently to me it seems that they have the burning of gas in view.

Q. Well, why does it seem that they have?

A. Because they are not building chimneys like they use to, and they haven't any vent pipe in their kitchens for carrying off smokes and the products of combustion of other fuels.

Q. You are referring to the so-called modern homes, the bungalow style and the California style of home?

A. I am referring to practically all of them.

Q. You are not referring to what we might term the humble home of three or four rooms—two or three rooms, built out of pine lumber?

A. We have many customers who practically have no furniture and still have gas stoves and are using gas for cooking and heating in their stoves.

Q. Yes, and hundreds of the same type of people that burn mesquite instead of gas.

A. There are some, but I don't know how many.

Q. Hundreds of them, aren't there?

A. I couldn't say that; I would have to check it.

Q. Yes, sir. And there are hundreds of houses and homes that are not even connected with gas, that you know of.

A. I don't know how many, Mr. Bobbitt.

[fol. 389] Q. Yes, sir. Is it true, Mr. Stein, that a large number of users of gas when you furnished it there over a long period of years at fifty cents a thousand cubic feet have ceased to use gas?

Mr. Coates: Just a minute. There is no testimony in this record, is there, as to a rate of fifty cents a thousand.

Mr. Bobbitt: I am——

The Court: I believe this witness said yesterday that at one time they charged it. Maybe not.

Mr. Coates: I don't think there is any testimony here, and the question is predicated on testimony not contained in the record, and we object to it for that reason, as being immaterial and prejudicial, and as relating to a time too remote to have any bearing on this case in any way, shape, form, or fashion.

Mr. Bobbitt: We made no objection, if the Court please, to a long examination of this witness by counsel, as to the conditions there.

Mr. Coates: But it all related in time——

The Court: *In* fact you made no objections, Mr. Bobbitt, does not cut him off from making some, if he thinks they are proper.

Mr. Bobbitt: That is true.

[fol. 390] Mr. Coates: Our questions sought to direct themself to a time which was reasonably related to the effective date of this Railroad Commission's order, and not to going back into past history and at remote periods when conditions were entirely different, or least not shown to be the same.

The Court: I think my mind is clear about this matter now. The question assumes that at one time the gas company furnished gas at fifty cents.

Mr. Coates: Yes, sir.

The Court: Now, if that is not in the record, then the question is assuming something that is not in evidence, and would be improper.

Q. Well, may I ask the question this way, Mr. Stein,—over a long period of years didn't you furnish gas to the residential consumers there at fifty cents a thousand?

Mr. Coates: Just a moment. We object to the question and the answer sought to be elicited as immaterial, having no bearing on any issue in this case, prejudicial, and is a comparison sought to be made without showing the conditions are like or similar.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

Mr. Bobbitt: Read the question, please.

(Thereupon the Reporter read the last preceding question as follows: "Well may I ask the question this way,

[fol. 391] Mr. Stein,—over a long period of years didn't you furnish gas to the residential consumers there at fifty cents a thousands?")

Mr. Coates: And as not certifying the time that he means by "a long period of years".

The Court: The objection is overruled.

Q. Would you answer the question, Mr. Stein?

A. We furnished gas in Laredo to what we termed our domestic consumers for a number of years at fifty cents per thousand cubic feet, gross.

Mr. Coates: And up to what time?

A. Up until the last few months of 1921, the exact date I don't remember.

Mr. Coates: Now, the evidence disclosing that this relates to a period more than twelve years ago, we renew our objection.

The Court: The objection is overruled. Both sides have gone into the history of this concern from its organization down to now.

Mr. Coates: Note our exception.

Q. From 1910 to 1921 you furnished gas down there at fifty cents a thousand to residential consumers?

A. Yes.

Q. In 1921 the price was raised to seventy-five cents a thousand?

A. Gross.

Q. Gross?

[fol. 392] Mr. Coates: Now, our objection goes to all this line of testimony.

The Court: Yes, sir.

Q. Now, my question is, Mr. Stein, you testified that it was your business to sell gas, when interrogated by Mr. Coates, and waiding modesty, you had done a good job selling all the gas you could?

A. I think we have done a very good job.

Q. Yes, sir, well, I think you have too, as far as that is concerned; but my question was this,—is it true that when you raised your price from fifty cents to seventy-five cents a thousand to residential consumers that you lost a substantial number of consumers?

A. I believe that is not true.

Q. You believe that is not true. Can you give us any accurate information about it?

A. It would take some time to gather that information.

Q. Yes, sir. You are manager of the concern——

A. Yes.

Q. —and were all these times?

A. I was not the manager in 1921.

Mr. Coates: We will stipulate that he was the manager of the concern, Mr. Bobbitt.

Mr. Bobbitt: I don't care about that; I am perfectly willing to stipulate some things——

The Court: Go ahead.

Mr. Bobbitt: But we would rather have testimony than [fol. 393] stipulations sometime.

The Court: Mr. Bobbitt, don't let's get into arguments between you lawyers.

Mr. Bobbitt: I beg the Court's pardon.

The Court: And let me say here that you have proved this man's connection at least six times this morning, from the day the concern was born until now, and it is unnecessary to prove that again.

Mr. Bobbitt: Yes, sir.

Q. You don't know accurately how many or if any customers you lost when you raised the price from fifty cents to seventy-five cents—you don't know about that?

A. I thought we gained some.

Q. You thought you gained some?

A. Yes.

Q. You thought raising the price would cause people to use the gas?

A. We have many more meters now than we had then.

Q. How much has the town grown in population since that time?

A. Well, probably fifty per cent.

Q. Fifty per cent. If I am correct in getting your answer here, that because they raised the price from fifty cents to seventy-five, would that cause more customers to use gas?

A. I think we have twice as many now.

Q. But do you think the raising of the price brought you [fol. 394] more customers?

A. I think it had nothing to do with it.

Q. Had nothing to do with it at all?

A. Yes.

Q. A reduction of the price has nothing to do with it?

A. I believe it would not help out any—add any customers materially; it may a few—one, or two or three may come on but there won't be any large number, nor will there be any exceptional increase.

Q. You never tried it, did you?

A. Well, that would certainly follow for the reasons I told you before, that the town is very well saturated.

Q. Uh huh. Now, you spoke of unprofitable customers Mr. Stein. I don't want to repeat anything here particularly, but you charge a dollar a thousand—you charge a dollar to each taker of gas or user for the first thousand cubic feet, whether they use five hundred feet or a thousand, don't you?

A. Our rate is at present one dollar minimum per month, regardless of the amount used, so long as it is not over—the amount used will not figure over one dollar.

Q. Exactly; and every residential user pays a dollar for a month—the first month, or the first thousand, whether they use half of it or not?

A. They pay a minimum charge of one dollar per month. They are entitled to use a certain amount of gas for that [fol. 395] dollar; if they don't use it, why, it is——

Q. Exactly some of them don't use it.

A. Very, very few, except in the summer time, quite a number of them get under the minimum.

Q. And when they use under the minimum for any month then you get more than the seventy-five cents a thousand for your gas, do you not?

A. If a consumer would use less than the amount, the rate would figure out, of course, at a higher figure.

Q. Now, you testified yesterday, Mr. Stein, at some length about the loss of this industrial business up and down the river?

A. Yes.

Q. On these irrigation plants. If I understood you that you lost that business because the electric company — to furnish fuel or energy cheaper than you could furnish gas?

A. Yes.

Q. Is that correct?

A. Yes they could, considering all the costs of operating the gas engines and the costs of operating an electric motor.

Q. Yes.

A. Over-all costs, not the direct fuel or power costs.

Q. Do you remember how many users of gas you had, for instance, south of Laredo—industrial users, at the peak?

[fol. 396] A. I don't remember the figures.

Q. Approximately how many were there, Mr. Stein?

A. I don't know; I have never gathered that information.

Q. Well, north of Laredo, up on the irrigation systems north of Laredo, how many users, approximately, did you have?

A. I would have to check into that, too. I don't remember the figures.

Q. You lost that—is it true that you lost that business at the time you raised your rate on gas for industrial consumption?

A. No.

Q. How is that?

A. No.

Q. Don't you know that that is true?

A. We did not lose any because we increased the rate. If we increased the rate——

Q. How do you know that that is not the reason?

A. Because we had no customers tell us so. That would certainly come in a complaint about it I believe, if that was the reason -or there discontinuing the use of gas.

Q. You have not had any controversies with those users about domestic gas?

A. Domestic gas?

Q. I mean industrial gas.

[fol. 397] A. I have had—I have discussed rates with our industrial customers from time to time.

Q. Well, you have had considerable rounds with a good many of them, haven't you, about the use or non-use of gas?

A. I don't think I have had any rounds with any of them if you mean a round like in a prize fight match.

Q. I don't mean that. You had controversies with them. They were seeking to get gas at a lower price—get you to furnish it to them?

A. Well, that is done frequently, regardless of what rate you sell them, they would like to get a lower rate.

Q. And they quit using gas and went to electricity?

A. Yes, they did in a number of instances where they had to buy additional equipment, or if their equipment was——

Q. Now, if it is true that those former users of industrial gas now burn crude oil and coal?

A. Well, some of those original customers have gone, and the plants are gone, and the farms have been abandoned; there are very few of those original customers left there.

Q. But there are some in operation?

A. There are a few, and we are furnishing all that can possibly utilize our service.

Q. Well, answer my question. A lot of them are using oil and coal?

A. A lot of them, no.

Q. Several of them?

A. I don't know any north of town that are using coal or [fol. 398] crude oil, along our line, except it be in an engine that I don't know about.

Q. Now, you spoke of the expense in connection with the use of electric power for those pumping plants, instead of gas for fuel—that they had to have an attendant to look after the gas engine. Is that true?

A. Yes they kept a man there—had to keep a man with the engine from the time it started until it finished.

Q. That was just a fellow to turn on and turn off the gas, wasn't it?

A. No, he had to see that this engine was properly lubricated, and if it stopped running he had to stop and repair it.

Q. What engine are you talking about?

A. Any gas engine.

Q. Aren't there any repairs to an engine run by an electric current?

A. Electric motors run a long time without attention.

Q. Well, now, Mr. Stein, isn't it true that you have a method of running engines and other facilities by gas, on what is called an automatic system, where you don't need an attendant?

A. Well, there are no farmers in that section that have invested in that high type of equipment.

Q. Well, they are not investing in gas equipment now at all, are they?

A. In some cases they have in the last few years.

[fol. 399] Q. Uh huh.

A. I have just connected an industrial customer in North Laredo since I have been back down there.

Q. That is the Smelter, isn't it?

A. No, sir, it is a pumping plant and steam boiler.

Q. Which one?

A. J. O. Walker.

Q. J. O. Walker?

A. Yes.

Q. And he is using gas?

A. He is using gas. He is using gas in four of his plants, and he is well satisfied.

Q. He is well satisfied. He has been kicking about the rate, hasn't he?

A. Oh, not enough to speak of. He would like to get a lower rate like all farmers do and all customers do.

Q. Like all customers do?

A. They would like to get a lower rate if they can get one, naturally, sure.

Q. He did not kick strong enough like the Houseman Packing Company?

A. He found it would be more advantageous to him to use gas than any other fuel. He had coal grates under his boilers when he changed, and he pulled them out and changed by installing gas burners and utilize the gas, and he had us run a special line to him and help pay for it.

[fol. 400] Q. And you undertake to get other customers to use gas, like J. O. Walker?

A. Why, indeed.

Q. You have?

A. Yes, we are contacting prospects.

Q. What do you charge Walker for industrial gas?

A. His rate is twenty cents a thousand cubic feet.

Q. Have you ever tried a twelve or fifteen cent rate on those fellows that are not using gas, to see if they would not take it up?

A. How long ago?

Q. Well, any time—six month, twelve month?

A. I don't know of anyone that we have lost up there because of the rate.

Q. It was because of something else?

A. Yes, other reasons.

Q. You don't think that reducing the price from twenty cents to ten cents would have any effect on the number of customers using industrial gas, or the volume of gas taken?

A. The ten cent price is something that is not—is not very practical, and I see no reason to consider it because in small amounts you may not be able to furnish gas at ten cents a thousand.

Q. Well, what about twelve?

[fol. 401] A. Well, there is a line somewhere. Just where it is I couldn't say, offhand.

Q. It is in the neighborhood of twelve. You can make lots of money off of it, can't you?

A. It depends on the amount you sell the customers.

Q. Now, going to the Houseman Packing Company. If I understand you you said they quit using gas and went to using crude oil?

A. Well, the change was made while I was in Mississippi.

Q. And you had been right on the job since you got back from Mississippi?

A. I tried to sell him gas again.

Q. And you made every effort to get him to go back to the use of gas?

A. Yes, and he promised—he said he would be very glad to use gas if the equivalent of gas would be 5600 cubic feet to a barrel of oil, and we have proved it to him, but he has been delaying the change-over to gas but the prospect or he will right soon, if he continues to operate his plant.

Q. He promised to come back to the use of gas if he could get it at a reasonable rate, didn't he?

A. At our existing rate, at that time when we talked to him.

Q. What was your existing rates when you talked to him?

A. We offered him our industrial schedule.

Q. Well, what is that? I don't know—I am talking about [fol. 402] rates. What price did you offer to sell him gas for?

A. I would have to refer to them to give it to you.

Q. You would have to get some kind of a schedule or something?

A. Yes, we have printed schedules.

Q. Well, don't you know the price that you made him on gas?

A. We have quite a number of industrial schedules. The price varies according to the class of consumer and the amount of consumption, and the price varies in several other ways; so we can't give any average price.

Q. Yes. Now, he is burning crude oil for fuel at this time?

A. He is burning his residue oil, not crude oil.

Q. Well, he is burning his residue oil that he hauls from the oil field sixty miles away?

A. He is burning oil—some residue oil that he got from the Motor Fuel Products Company right now, most of it.

Q. Now, his general policy—I think you are acquainted with the real facts; you testified at considerable length yesterday that the major portion of his fuel that he burned in the packing concern is oil that he trucks in from the field way out in the Carolina-Texas oil field, isn't that true?

A. He has it trucked in for him, I think, and he had——

Q. Well, it doesn't make any difference.

[fol. 403] A. He has now some oil shipped in to him.

Q. Well, it is either shipped in or trucked in from the oil fields, and is burned there as fuel.

A. Yes, he uses his—he takes his crude oil and refines it and takes the gasoline from it and uses it in the motor cars, and uses the gas oil in his engines, and burns the residue.

Q. And has all the facilities there installed in his plant?

A. All of the facilities are installed there.

Q. Yes; and you are trying to get him to use gas?

A. Yes.

Q. And he uses oil or the residue, whatever it is?

A. And he uses very little, too.

Q. Very little what?

A. Oil, compared to what he used to use.

Q. Well, now, how do you know all of the details of that?

A. I don't know that—I have that from his—from what he says.

Q. Well, that plant is running now at pretty much full capacity, isn't it, that packing plant?

A. No.

Q. Now, at what capacity is it running?

A. They have curtailed operations considerably.

[fol. 404] Q. Well, what do you mean by considerable? How much?

A. Possibly half.

Q. Possibly half. You don't know about that, though?

A. I am not definite about it; not right sure about it.

Q. Yes, sir.

A. I know that they curtailed the operations there to some extent.

Q. Well, now, Mr. Stein, aren't there other refineries located right in or right near the area where the oil is produced? Aren't other refineries there that use gas, furnished by your company, for fuel purposes?

A. Please, which refinery did you state there?

Q. Well, say the Misko Refinery; aren't you furnishing them gas?

A. We are not furnishing them gas at the present time.

Q. You have furnished them gas at various times?

A. We have in the years gone by.

Q. You furnished gas to the little Hall Refinery up there?

A. No, I believe not.

Q. You never did?

A. I don't think so.

Q. Did you furnish gas to the Humble refineries?

A. The Humble refineries—where is that?

Q. Well, away over at Houston, on the Buffalo Bayou?

A. That's out of my jurisdiction; I don't know what they do over there.

Q. Well, I am not asking you what you know that they do over there; don't you know that the large refineries, [fol. 405] that are refining oil, because of the savings in their operations because they can get gas for their fuel, that they are burning gas because of the price of it?

Mr. Coates: The same objection, because no proper predicate is laid by showing that conditions are like and similar, and comparable circumstances, and all the other objections directed to the comparison of prices where the conditions are not so shown.

The Court: I think if your objection was that the question was asked of the witness several times and has been answered several times, that he didn't know, I would sustain the objection.

Mr. Coates: All right, and on that ground also.

The Court: The objection is sustained.

Mr. Bobbitt: Well, I didn't think he had—perhaps I am in error about that, but I didn't know he had answered it.

Q. Now, this gas transmission line, Mr. Stein, running from the Carolina-Texas field to the city of Laredo; do you know the capacity of that line for gas; how many thousand cubic feet a day it would carry?

A. I don't know.

Q. Have you any idea?

A. I could not make you even a very close guess.

Q. Didn't you operate that company for about fifteen years?

A. Yes, I operated it for some time, but the capacity depends quite a lot on the pressures in the field and the pres-
[fol. 406] sures at the delivery points, and also of course upon the various sizes of lines, and without those factors, I could not name a capacity, like you would a barrel, or something like that.

Q. Well now, Mr. Stein——

The Court: Let's don't argue with the witness; he says he doesn't know, and that means that he doesn't know. The fact that somebody thinks he should know, wouldn't help out if he does not know.

Q. Mr. Stein, what amount of gas per day is being transmitted through this line at the present time?

Mr. Coates: Per what day, Mr. Bobbitt?

Q. Well, I am asking how much gas is being transported through that line, yesterday, for instance, or any particular time.

Mr. Coates: We will try to get you those figures.

Q. I am asking your district manager there, if he knows.

The Court: Do you know, Mr. Stein?

A. I do not know how much they delivered yesterday or any one day because it varies from time to time, dependent on the requirements of the load.

Q. Take on an average day, Mr. Stein.

A. In what month?

Q. In January, or in March, for instance.

A. It varies from month to month and from year to year.

Q. Take any month.

A. I would have to look up those figures; I can not keep those figures in my mind.

[fol. 407] Q. On the heaviest day——

The Court: They will furnish those figures, and the witness doesn't know what they are now.

Mr. Bobbitt: I wanted to ask this witness some other questions on that; and if we can get that now, it is important to have it.

The Court: He says he doesn't know, and there is no use in burdening the record with those questions until he does get it.

Q. Let me ask you this question, Mr. Stein. Your facilities for the transportation of gas from the field to the city gate, the capacity of those facilities exceeds the amount of gas that is required to serve the city of Laredo and all persons taking gas through that line; isn't that true?

A. We have excess facilities at this time.

Q. You have excess facilities, and you must maintain those facilities, as I understand it, to serve the residential consumers in the city of Laredo?

A. And the industrial and the commercial.

Q. And you do maintain them?

A. Yes.

Q. And you have the same facilities, whether you have a large or a small amount of the industrial consumers?

A. There is a limit to the amount of gas that could be put through that line.

Q. I understand that.

[fol. 408] A. And that would be the difference between its capacity and the highest requirements that the domestic customers would have for some time.

Q. We are not asking all that detail; I am just asking you a question about the——

Mr. Coates: And he is trying to answer the question.

A. I am trying to answer it the best I know how.

Mr. Coates: And I contend that what he has said is in answer to your question.

Mr. Bobbitt: Well, I think not, but I don't care to argue about it.

The Court: Let's not argue about it gentlemen.

Q. Mr. Stein, you are serving gas through that line to the Central Power & Light Company, now, for industrial purposes, are you not?

A. The Central Power & Light Company in Laredo uses——

Q. I didn't ask you about the amount. You are now serving gas through those pipe lines to the Central Power & Light Company in Laredo?

A. We are ready to serve them.

Q. And they are taking gas right now, aren't they, Mr. Stein?

A. They may not be taking a foot of gas today.

Q. Well, they are one of your regular customers, and the testimony shows that they are using gas.

A. I doubt that they will take a cubic foot of gas today.

Q. You are hooked up to serve them, and you do serve [fol. 409] them; you are already connected to their plant?

A. We are ready to serve them, yes.

Q. And you don't know the amount that they are taking now?

A. No, I do not.

Q. You don't know.

A. No.

Q. You pay for that gas, in the field, four and five cents a thousand cubic feet, don't you?

A. I want to get myself clear on that point; I am handling the distribution department, and the price paid by the company for gas in the field is something that is handled by other departments entirely.

The Court: That is already in the record, anyway.

Q. What additional cost to the purchase price of gas would incur to the Company for the transportation of a million cubic feet of gas per day, through that pipe line facilities to the Central Power & Light Company's plant?

Mr. Coates: Now, we object to that question and the answer sought to be elicited from the witness, for the reason that no proper predicate has been laid by showing that there is a market for this additional million cubic feet a day to which he refers, and that such additional gas could be sold. Second, because the question assumes the doing of an unlawful act by the company, and its continuance, in that it assumes discrimination against customers of all other classes by charging all other costs of service other than the [fol. 410] well mouth price to the other classes of customers, and likewise assumes discrimination against all other industrial consumers located elsewhere but taking gas under like and similar conditions, and assumes a sale without taking into account and including in the price a fair prorata part of the cost of serving that consumer.

The Court: Read the question, Mr. Reporter.

(Whereupon the following question was read to the court: "What additional cost to the purchase price of gas would incur to the company for the transportation of a million cubic feet of gas per day, through that pipe line facilities, to the Central Power & Light Company's plant?")

Mr. Coates: And we object likewise, because the question does not give the material factors which are necessary to any answer or any intelligent answer to the question.

The Court: I will sustain that objection.

Mr. Bobbitt: Note our exception. Now, let me understand the Court: you sustained the objection to what portion of the question?

The Court: To the whole question; the question itself is not so framed that any intelligent answer can be made to it.

Q. Mr. Stein, taking into account all elements of expense that would properly accrue to the company for the transportation of a million cubic feet of gas from the wells through that transmission line to the burner of the Central Power & Light Company for industrial purposes, in addition to the purchase price of the gas, what is such additional cost or expense?

[fol. 411] Mr. Coates: The same objection, and the further objection, that——

The Court: Sustain the objection.

Mr. Bobbitt: Note our exception. If I understood the Court, if you please, on yesterday they made the objection to this line of testimony on the ground that it was not shown that the facilities from the city gate to the customer was taken into account. Now, we have a customer here who is taking gas, with the facilities all installed and is taking gas according to the testimony, daily, and they complained about the loss of industrial business, gas business, and what we are trying to get at, if the Court please, is the costs that the company would incur in transporting gas from the field to the customer, in addition to the purchase price; and I am asking him to take into account every element that would be experienced by the company, in costs, in addition to the purchase price, and tell us what that would be, if he knows.

The Court: And I sustained the objection on it, because I do not believe the question, as asked, was capable of being intelligently answered by anybody. I think you left out some elements that I understood were in the question yesterday.

Q. Well, in checking over these notes here, I believe that when you made this contract referred to this morning, Mr. Stein, between the South Texas Gas Company and the Southern Gas Company, you were looking for an additional supply of gas. You made that contract in 1929, in the Carolina-Texas field?

A. Yes.

[fol. 412] Q. What was the maximum number of meters, Mr. Stein, if you know, that you had in the city of Laredo for residential users?

A. I don't know.

Q. You don't know?

A. Because the classification now is different than it was.

Q. Could you get that information for us?

A. It could be done, but it would mean an analysis of practically every customer we have.

Q. Can't you, without any considerable trouble, find us the largest number of residential gas users you have in Laredo?

A. We would have to segregate all of the government and municipal and all of the commercial, in order to do that, and that would require a check of every user on the line at that time, to determine whether he was governmental or municipal, or some other class.

Q. How do you know you have the saturation point, if you don't have that information?

Mr. Coates: Are you asking for the total number of meters in Laredo of all classes, or all the residential?

Q. I am asking about the residential, and he went on talking about something else.

A. There are vacant houses in the community.

Q. I am not talking about vacant houses, but the highest number of meters you have had in the city of Laredo.

A. I understood you to ask me about the saturation point.

Q. That was another question.

[fol. 413] A. I don't know whether I got just what your question was or not.

The Court: Why not ask the question over again, and save all this argument.

Q. What is the highest number of residential meters that you have had in the City of Laredo?

A. Well, I don't——

Mr. Coates: Tell him the figures you have, and see whether or not that will satisfy his question.

Q. I just want the number, if he knows it.

A. I have a figure, of the class of domestics carried in 1913, of 5113 residential——

Mr. Coates: Don't you mean 1930, Mr. Stein?

A. I said 1913, I should have said in 1930.

Mr. Bobbitt: Now, Mr. Coates, this witness is the district manager, and he knows how to testify.

Mr. Coates: Well, obviously you don't want a plain error of that kind to appear in the record, and by obvious inadvertence he said 1913 when he meant 1930, and I don't think it was improper to correct him, or was misleading.

Mr. Bobbitt: Well, if you think it wasn't improper——

Q. Will you give us that figure again?

A. 5113 meters, in the domestic classification in 1930.

Q. What do you mean by that domestic classification?

A. The domestic classification included all meters that were serving gas at the 75 cents rate, less the 10 per cent discount.

Q. What other meters did you have at that time?

[fol. 414] A. We had some hotels and restaurants and bakeries.

Q. How many?

A. I don't know.

Q. Haven't you got those figures here?

A. I haven't got those figures.

Q. Can you get them?

A. Yes, I can.

Q. Where did you get those figures?

A. I copied these from the same statement that had the other information.

Q. You can get that information?

A. Yes, but we will have to send to Laredo for it.

Mr. Coates: We will be glad to get it, Mr. Bobbitt.

A. Indeed we will.

Q. That was in the year 1930. You had 5113 domestic meters?

A. Yes.

Q. That means residential meters, doesn't it?

A. It means government, municipal, and all the meters in Fort McIntosh, and there are included in that some 130 meters; and all the commercial establishments, stores and so forth, which are not included in residential now.

Q. They paid 75 cents?

A. They paid the same rate; and we classify them according to use, now.

Q. How many meters do you have now—the first of December, or December 31, 1933?

[fol. 415] Mr. Coates: Total, or residential?

Q. Of that class he is talking about.

A. That is not carried in that class now.

Q. When did you change your class on it?

A. We changed it to get a more correct classification.

Q. I say when did you change it?

A. Early in 1931.

Q. You can not give us the number of domestic meters at this time or at the first of January, 1934?

A. Not the domestic, no; not the way we had them classified previously.

Q. What is the total on the 75 cents class, now?

A. We are not carrying them that way; I would have to analyze the records, and recheck that.

Q. How do you carry it?

A. The consumption is now carried according to the use to which the gas is put; that is, where it is used.

Q. What was that now?

A. In other words, residential, regardless of rate—of course the residential rate is 75 cents less 10 per cent discount; the commercial includes stores which pays 75 cents less 10 percent and it also includes other industries or other establishments and then we have an industrial—some of the industrials pay a 75 cent rate.

Q. They do?

A. Yes.

Q. How many of them?

[fol. 416] A. I don't know. I will have to check into that; they are classed as an industrial, simply because a very small amount of gas is used, and the customer prefers that rate.

Q. You can not give us the number of users paying the 75 cents rate at this time?

A. I can not do that; we can get the information for you.

Q. You can do that shortly?

A. It will take a little time, but we can do it for you.

Q. Will you try to get that as of December 31, 1933?

A. I will have a notation made of that.

Recess had from 11:20 A. M. until 11:30 A. M.

Q. Mr. Stein, I will ask you to look at that letter, and identify it, for the purposes only of identification.

Mr. Coates: Do you have another copy of that letter, Mr. Bobbitt?

Q. No. We are not introducing it, but only asking him to identify it. Did you send the original letter of which this is a copy?

A. I mailed the original letter of which that is a copy.

Q. It is a letter dated at Laredo, Texas, June 26, 1923, and addressed to Mr. G. R. Page, Houston, Texas. You mailed the original of which this is a copy?

A. Yes.

Q. And this other communication here, bearing date, Laredo, Texas, April 14, 1921, addressed to Mr. G. R. Page, Houston, Texas. Will you examine that also?

[fols. 417-450] A. Yes, I have examined it.

Q. And did you mail the original of which that is a copy?

A. I did.

Q. All right, thank you. Now, we will have them marked by the reporter, for identification only.

(Said instruments then marked by the reporter for purposes of identification only, with the initials HB.)

Mr. Coates: You are not introducing that?

Q. No, sir, not at this time. I believe you have a memorandum, Mr. Stein, of the information we requested you to get, and which you said you can get for us?

A. Do you have that, Mr. Scurry?

Mr. Scurry: I made a memorandum of it, and will check it with Mr. Bobbitt, to be sure.

Q. One other question, Mr. Stein, with respect to these letters which you just examined and identified. What

official capacity did you hold at the time these communications were written?

A. I was assistant treasurer of the Border Gas Company.

Q. At the time both letters were written?

A. Yes.

Q. One dated June 26, 1923, and the other dated April 14, 1921?

A. Yes.

Q. And you were the assistant treasurer at both those times?

A. Yes.

Q. I believe that is all for the present.

Mr. Coates: No further questions.

(Witness Stein is excused.)

* * * * * * *

[fol. 451] Testimony of M. A. Abernathy

Q. The United Gas Public Service Company owns the controlling interest in the Southern Gas Company?

A. I believe so, yes.

[fol. 452] Q. And the United Gas Public Service Company owns a controlling interest in the South Texas Gas Company also; that is correct, isn't it?

A. Well, I don't believe the South Texas Gas Company is in existence now.

Q. Well, its properties, and all the benefits that accrued under this contract is owned by the United Gas Public Service Co.?

A. Yes.

Q. And so, as a matter of fact, both companies, and all benefits accruing to either of the companies under the contract, is owned by the United Gas Public Service Company. That is correct, is it not?

A. Well, I don't know whether the United Gas Public Service Company owns all of the Southern Gas Company's stock or not.

Q. It owns a controlling interest?

A. I think so, yes.

Q. Don't you know that, as superintendent of transportation and transmission properties?

A. I believe that to be true, yes.

Q. Yes, sir. So as a matter of fact, Mr. Abernathy, it wouldn't make any difference who had the benefit or who had the loss, as a practical matter, to the owning and operating company, would it?

A. Well, it would make some difference, yes.

Q. What difference?

A. To the extent that the ownership might be different, [fol. 453] I think it would make a difference.

Q. It would make a little difference, according to the little difference in the stock ownership?

A. Yes.

Q. But the United Gas Public Service Company can do anything it desires with either of the companies, ow-ing the major interest in both of them?

Mr. Coates: We believe that is immaterial.

The Court: I sustain the objection, because that is a legal conclusion.

Q. Now, page 1 of Exhibit 8, that you have been testifying about, Mr. Abernathy; that is the estimated investment, as of November 1, 1929. It is an estimated investment all the way thru, isn't it?

A. Yes.

Q. That's correct, isn't it?

A. Yes.

Q. Which you have taken all the way through here?

A. Yes.

Q. Did you state that the engineering department prepared these estimated figures?

A. Yes.

Q. You did not prepare these costs?

A. No.

Q. It is an estimate all the way through. Now, you state on page 1 of Exhibit 8, Re-arrangement expense, November [fol. 454] and December, 1929, $7,375.00. Now what do you mean by that "Re-arrangement Expense"?

A. I mean that that is the estimate of the cost the Southern Gas Company incurred in re-arrangement of their gathering system to connect with the South Texas Gas Company's pipe line.

Q. You don't know anything about the accuracy of that figure, do you?

A. Well, it is an estimate prepared by the Engineering Department.

Q. Yes, but you of your own knowledge don't know anything about it?

A. No.

Q. And all the way through this exhibit—each page of it, it is an estimated expenditure and estimated cost, isn't it?

A. No, no; they are not all estimated costs.

Q. Well, now, page 1 is an estimated investment, isn't it, that you referred to?

A. It is an estimate of the investment based upon the facilities constructed, yes.

Q. Page 2, line 1, "the investment shown above is the estimated expenditure by Southern Gas Company." That is an estimate, isn't it?

A. I beg your pardon; I didn't understand you.

Q. That is an estimate, isn't it?

A. Which?

[fol. 455] Q. You state here "The investment shown below is the estimated expenditure"—that is an estimate, isn't it?

A. Yes, it is an estimate of the actual costs.

Q. Page 3, you refer to estimated expenditures by Southern Gas Company—that is just an estimate, isn't it?

A. Now, let me ask you, which figure are you referring to as being estimated?

Q. Page 3—I am just taking your figures in the first line of the page there, page 3.

A. The $37,293.00?

Q. Yes.

A. In the first line?

Q. Yes.

A. Yes, that is.

Q. That is an estimate?

A. That is an estimate, yes.

Q. Yes, and, as I say, on each page here you refer to estimated investment, and then you set out the particular figures.

A. Yes.

Q. It is all an estimate, isn't it?

A. Yes, it is an estimate of the actual costs.

Q. Yes, sir, and being an estimate, Mr. Abernathy, it may be correct and it may not be correct—that is true, isn't it?

A. There is that possibility, yes.

Q. Yes, sir. Now, if I understand this exhibit, Mr. Abernathy, and the conclusions on the figure reached here, it costs more to own and operate these properties than it would to have paid the one cent gathering charge in addi- [fol. 456] tion to the purchase price of the gas, wouldn't it, according to your own figures?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. Based on the estimates that you have made here?

A. Yes.

Q. Now, you testified about this three cent gas, that none of that goes to Laredo because of the volume, I believe, two million feet a day are not required for the Laredo market, and for that reason, why, you didn't send Laredo any of the three cent gas, is that corect?

A. Well, that is not the only reason.

Q. Uh huh. Is that the main reason?

A. I don't know that I understand just what you mean, Mr. Bobbitt. You will have to——

Q. Well, for what reasons—give us the reasons why you do not furnish the Laredo market the three cent gas instead of the four and five cent gas?

A. Well, in the first place, we have gas in the Carolina-Tex field and in the West Jennings field that we have prior commitments on, that was purchased for that purpose, and if this gas were sent up there it would mean that we would have to shut off all the other gas; and, in the next place, we couldn't take a sufficient quantity to Laredo to justify—to equal that minimum that we have under the contract.

Q. You have, as I understand the set-up in the pleadings [fol. 457] in this case, this line from Jennings Junction through the Jim Hogg Junction, on up to the Bruni Station and Carolina-Tex Junction——

A. Yes.

Q. On to the Carolina-Tex field?

A. Yes.

Q. And on down to Aguilares, and through to Laredo?

A. Yes.

Q. That is all inter-connected, is it not?

A. Yes.

Q. And that is one of the benefits that you contend, I believe, as an operating company, accrues to Laredo, being on an inter-connected system—is that correct?

A. Well, I don't know; I don't have that information; I don't know what the contentions are.

Mr. Coates: He said he didn't know what the lawyers were contending?

The Court: That is right.

Q. This section over here (indicating on map) near the figure 10 on the map—figure 10 is what is commonly termed the East Jennings field, isn't it, on the map here?

A. No, the figure 10 is not the East Jennings field.

Q. Well, where is the East Jennings field?

A. This area here (indicating) is commonly referred to as the East Jennings field—these wells that are shown on the map here.

Q. Well, that is No. 11—that is what is generally termed [fol. 458] the East Jennings field; and this portion over here (indicating) that I am marking 12 in a circle, that is commonly known as the West Jennings field, is it not?

A. Yes.

Q. It is entirely practicable, isn't it, Mr. Abernathy, to transport gas from either the east or the West Jennings field through this interconnected system, through the Carolina-Tex field into Laredo?

A. It would be possible if the pressures were sufficient, but in that case I would think that you would have to include a part of the facilities through which that comes, probably.

Q. I didn't ask you that. We will get around to that. I say it is practicable for an interconnected system, such as the United Gas Public Service Company, to transport gas along in the direction that I have indicated.

A. I wouldn't say it is practicable; I would say it is possible.

Q. Well, if you run out of gas, as you indicate the Carolina-Tex field is being depleted——

A. Yes.

Q. If you run out of gas in the Carolina-Tex field——

A. Yes.

Q. —and for some reason this so-called transmission line from Pescadito Junction to the Jennings field is not carry-

ing gas, then you would have to get gas from some place else, wouldn't you?

A. Yes.

[fol. 459] Q. Wouldn't you probably get it from the Jennings field?

A. I don't—I haven't given that any particular consideration. I don't think——

Q. But that is practicable, isn't it?

Mr. Coates: Now, let him finish his answer. Mr. Bobbitt.

A. I don't think the pressures in the Jennings field are sufficient to feed the gas around in that manner.

Q. But if it's necessary, you would put the pressure to it, wouldn't you?

A. I don't know. It might involve a considerable investment. I don't know whether it would be justified or not.

Q. You don't know?

A. No.

Q. Now, as a matter of fact, Mr. Abernathy, this new field marked down here—what was that called—what did you name that field, the Fansler field?

A. We generally call it the Fansler field.

Q. And that is where the three-cent gas comes from?

A. Yes.

Q. Practically all of that gas that you get out of that field at the present time, as I understand it, goes to Mexico?

A. All of it does.

Q. All of it goes to Mexico?

A. Yes, sir.

Q. A large amount of the gas from the West Jennings field, here at figure 12 (indicating) also goes to Mexico, doesn't it?

[fol. 460] A. Well, I wouldn't say a large amount; some of it does, yes.

Q. Do you know how much?

A. Not offhand, not exactly, no.

Q. Well, can you estimate that, what portion of the gas production from the West Jennings field goes to Mexico?

Mr. Coates: The witness has said that he doesn't know.

The Court: He is now asking him for an estimate. If he can make an estimate I will let him make it.

A. I don't know. I haven't looked at the figures of the

production from that field recently, and I don't know. A good portion of it is going towards Mexico, yes.

Q. Well, you don't know how much, if any, goes from the West Jennings field through this line to Pescado to Junction, do you?

A. Yes, I know that there is gas going through that line.

Q. I say you don't know how much.

A. I don't know exactly, no.

Q. Do you know more about the gas coming in this direction from the West Jennings field than you do the other way?

A. Well, I don't recall just how much has been produced in the Jennings field.

Q. Now, likewise, Mr. Abernathy, gas from the West Jennings field and the East Jennings field furnishes a supply of gas to the Rio Grande Valley points, through this pipe line?

A. No, sir.

Q. It does not?

[fol. 461] A. No, sir.

Q. Where does the gas come from that goes on through the Jim Hogg Junction to the Valley?

A. It comes from Bruni.

Q. All of it?

A. I believe at this time—right at this time all of it comes from that area.

Q. Does any of it come from the Carolina-Tex area?

A. No, sir.

Q. Now, you have testified something about the Carolina-Tex field becoming depleted, or the wells getting low there. Do you know the actual production of gas in the Carolina-Tex field at this time, generally?

A. Generally?

Q. Not only your own properties, but other properties?

A. I don't know the totals—the total amount being produced from the field, no.

Q. It is quite a large amount, is it not?

A. I know about how much we are producing.

Q. Well, about how much?

A. I mean how much we are taking out of there.

Q. You mean taking to Laredo, or taking for all purposes?

A. Well, we are not taking it for any other purpose except to Laredo?

Q. You are not taking any of the Carolina-Tex field gas except to Laredo?

A. Well, except to Laredo and the other towns along the line.

Q. Yes; you have an abundant supply of gas from the [fol. 462] Carolina-Tex field to the city of Laredo and other towns on this line?

A. I don't think so.

Q. You don't?

A. No, sir, I wouldn't call it an abundant supply.

Q. Well, have you sufficient to furnish all the supply—all the requirements at the present time?

A. Yes, we have sufficient to do that.

Q. Then all the gas which goes to Laredo or along this line to these other towns, comes from the Carolina-Tex field?

A. No, there is part of it that comes from the Jennings field.

Q. How much, if you know?

A. I am not certain that I know the exact figure. I think it is running about two or three hundred thousand feet a day, coming from that field.

Q. Two or three hundred thousand feet a day?

A. Yes, I think so.

Q. That is the line you testified about having so many hot spots in it this morning, isn't it?

A. Yes.

Q. That is the line?

A. Yes.

Q. And that is the line that was used one day—used to transport gas one day in 1931, wasn't it?

A. No, I don't recall—I don't know offhand how many days it was used in 1931.

Q. Well, as Superintendent of Transportation and Transmission, don't you know as a matter of fact, and didn't you [fol. 463] so testify in the other hearing, that this line was used one day, and only one day for the transportation of gas in 1931—the year 1931?

A. I don't recall testifying for the year 1931. I know that the line was not used very much.

Q. Well, don't you know, as Superintendent of Transportation for the company—don't you know now as a fact that it was used only one day in 1931?

A. No, I do not know.

Q. You don't know that?

A. No.

[fol. 464] Q. Do you know whether it was used two days or three days?

A. I know that it was not used a great deal. It was used possibly several times during the year.

Q. Possibly, but you don't know?

A. I don't know exactly the number, no.

Q. You can't even estimate whether it was one day or five?

A. It was several.

Q. You now testify it was used several days in 1931?

A. Several times.

Q. Well, several times in one day or on different days? I think this is important; I want to be certain about these things.

A. No, I don't recall the exact number of times it was used.

Q. Well, now, isn't it true, Mr. Abernathy, that this Carolina-Tex. field produces each day and there are now taken from the Carolina-Tex. field each day a good many million cubic feet of gas for transmission to San Antonio, Houston and other places?

Mr. Coates: That calls for the witness to know what Mr. Bobbitt means by "a good many millions". If you will limit it or circumscribe it he can give you an answer.

Mr. Bobbitt: The witness is Superintendent of Transportation, and he has testified that this field is being depleted.

Mr. Coates: We object to the question as too broad and [fol. 465] too vague and as not being capable of a direct categorical answer.

Mr. Bobbitt: Well, let's don't have it direct and categorical.

Q. Can you give any reasonable estimate, Mr. Abernathy, as Superintendent of Transportation, of the number of million cubic feet per day taken at the present time from the Carolina-Tex. field?

A. During the year 1933 our company took from the Carolina-Tex. field, I think the figures show——

Q. I am not asking what your company took, unless you want to give it to us.

A. Well, I don't have the figures on what the other companies have taken.

Q. Have you made any estimate—you are interested in the permanency of that field, are you not, as a gas producing area?

A. Yes.

Q. Well, have you made any check or tabulation as to what other companies are taking out of that field?

A. I have not.

Q. Has the company made any?

A. I imagine they have.

Q. You don't know anything about it?

A. I have not personally seen the figures, no.

Q. Mr. Abernathy, what has been the open flow of gas wells—what is the open flow at the present time in the Carolina-Tex. field?

[fol. 466] A. The Mirando sand wells, I think, have an open flow of probably about two, or possibly three or four million feet, and twenty-two hundred foot sand wells have an open flow, I believe, of around eight or possibly ten million; that is my recollection.

Q. One sand has two or three million open flow and another sand ten million?

A. Eight to ten million, I think.

The Court: That is per day?

A. Per day.

Q. Is that the total flow on each well?

A. Each well.

Q. How many wells?

A. Let's see. I believe that we have three wells in the twenty-two hundred foot sand.

Q. Ten million cubic feet each per day?

A. Eight to ten, I said. I don't have the exact figure.

Q. All right.

A. And I believe there are five Mirando sand wells.

Q. Of two to three million each a day?

A. Yes, sir.

Q. That is your company?

A. Yes.

Q. Now, what is the open flow of the other companies?

A. I don't know.

A. Operating in that area?

A. I don't know, Mr. Bobbitt.

Q. You haven't checked that?

[fol. 467] A. No, sir.

Q. Do you know what the Houston Oil Company is taking per day out of that Carolina-Tex. field?

A. Not definitely, no. So far as I know, they are not taking any appreciable amount.

Q. Approximately?

A. I don't think they are taking a great deal more than we are taking, as far as that is concerned. That is my information.

Q. You haven't made any check on it?

A. No, sir.

Q. You don't know as a matter of fact that they are taking an average of ten million cubic feet a day?

A. I don't know; I don't think they are.

Q. Have you any information about the adjoining gas fields in the Carolina-Tex. area?

A. What?

Q. The Bruni field and other fields in that immediate area there?

A. Not specifically; just generally, is all.

Q. What is the open flow of the wells in the Bruni field—natural gas?

A. Well, the wells vary between rather wide limits.

Q. Well, what are the highest and what are the lowest, if you recall?

A. Are you talking about the Cole Bruni field?

Q. Yes. Take them one at a time, if you will, Mr. Abernathy.

A. As I say, the open flow on those wells is variable; I [fol. 468] don't remember any specific wells, but I think they vary all the way from zero up to possibly twenty million or something like that.

Q. Per well?

A. Yes, sir.

Q. And how many wells?

A. I don't know.

Q. Quite a number of them?

A. Yes, there is quite a few of them.

Q. Have you any information, Mr. Abernathy, as to the amount of gas being taken by Southern Gas Company per day out of that field and through the pipe line to San Antonio?

A. Out of which field?

Q. Out of the Carolina-Tex. field through this twelve inch pipe line.

A. Through the twelve inch line?

Q. Yes.

Mr. Coates: That isn't the Carolina.

A. That is out of the Bruni field.

Q. It is connected up with the Carolina-Tex. field?

A. There is no gas taken from there to San Antonio.

Q. Well, do you know the volume taken through the San Antonio transmission line per day?

A. It is a variable quantity. I think through that line it runs about seven or eight million a day.

Q. Your company owns that line?

[fol. 469] A. Yes, sir.

Q. Do you know about this other line, this fourteen inch line to San Antonio?

A. What about it?

Q. Do you know the volume of gas being taken per day?

A. Well, it varies from day to day and month to month.

Q. Approximately?

A. Possibly an average—oh, twelve or fourteen million or something like that.

Q. Your company owns that line?

A. Yes, sir.

Q. Now, this map does not show the Houston Oil Company's line?

A. No, sir.

Q. It runs from the Carolina-Tex. field to Houston?

A. Well, it is connected with several fields.

Q. Well, the main source of supply is the Carolina-Tex. field?

A. I don't think so. Their compressor station is located over here (indicating on map), and they have a branch line to the Carolina-Tex. field. Whether they are taking any gas out of there now or not I am not certain.

Q. Now, this contract, Mr. Abernathy, with those two concerns, South Texas Gas Company and Southern Gas Company,—this six cent contract.

A. Yes, sir.

Q. Have you made any contracts, or has the company for which you are Superintendent of Transportation made any

[fol. 470] other such contracts with outside or independent parties?

A. No, I don't recall that we have.

Q. That is the only contract that you know of that is in existence of that type and character in this area, isn't it?

A. I believe it is the only one that I know of; that is, there is not any other that I know of.

Q. Now, how many three cent contracts have you got in the Jennings area that you know of?

A. We haven't any in the Jennings area.

Q. Well, the Fansler field that you testified about?

A. I don't know exactly how many.

Q. Approximately?

A. There are several of those.

Q. Approximately how many?

A. Some five or six.

Q. Those are for two years?

A. All except the Fansler contract, yes.

Q. How long is the Fansler contract?

A. I believe it is for the life of the lease, but I am not certain about that; I think that is correct.

Q. Well, the contract will speak for itself.

A. Yes, sir.

Q. I believe we will see that contract. Now, refer to Jim Hogg Junction there.

A. Yes.

Q. At that point you furnish and deliver gas to the Rio [fol. 471] Grande Valley line, do you not?

A. Yes, sir.

Q. You furnish gas and deliver it at Jim Hogg Junction?

Mr. Coates: We object to it because it is not shown to have any material bearing on any issue in the case.

The Court: It has already been testified about in the case.

Mr. Bobbitt: He didn't give the price.

The Court: No.

Q. At what price do you deliver gas to the Rio Grande Valley Gas Company at Jim Hogg Junction there?

Mr. Coates: That is objected to because it is not shown that conditions are alike and similar, that the volumes and markets are the same, that the load factors are the same, and no proper predicate is laid for the question.

The Court: I will let him answer.

Mr. Coates: Note the exception.

Q. Do you know the price your company gets for gas delivered to the Rio Grande Valley Gas Company at the Jim Hogg meter?

A. I am not certain that I do, Mr. Bobbitt.

Q. Aren't you Superintendent of Transportation of those transmission lines?

A. Yes, but that does not necessarily fall within my jurisdiction.

Q. Well, in whose jurisdiction does it fall in to know the price?

[fol. 472] A. The Industrial Department makes all such contracts.

Q. Well, who heads that department?

A. Mr. Randall is the head of that department.

Q. Does Mr. Greene or any other of the gentlemen here present know about it?

A. I can't say.

Mr. Coates: We object to that. He does not know what somebody else knows.

The Court: No. He could know, too.

Q. Are you an officer of this company as well as Superintendent of Transportation—are you an officer of the United Gas Public Service Company?

A. No.

Q. Are you an officer of any of these subsidiaries?

A. Well, what do you mean constitutes an officer?

Q. Well, Vice-President?

A. No.

Q. Or President or Secretary?

A. No, sir.

Q. Assistant Secretary?

A. No, sir.

Q. Director of any of them?

A. Yes, I am a director of Southern Gas Company.

Q. You are a director of Southern Gas Company?

A. Yes, sir.

Q. Isn't that green line there on the map called the Southern Gas Company transmission line?

A. Yes.

[fol. 473] Q. And you are a director in that?

A. Yes.

Q. And it is hooked up there to deliver gas to the Rio Grande Valley?

A. Yes, sir.

Q. And you don't know the price it gets for the gas?

Mr. Coates: We object to that.

The Court: He said he does not know.

Mr. Bobbitt: I thought I could refresh his memory, if the Court please. Do you want to stipulate on that, Mr. Coates? We don't seem to have a witness here. Are you willing to stipulate the price of gas at Jim Hogg Junction?

Mr. Coates: I am not. I don't think it is material to any issue in the case.

The Court: Go ahead, Gentlemen.

Q. Taking up these notes here of your testimony on Direct this morning, I believe you said you had been in the gas business about ten years?

A. I said directly with the gas company.

Q. How long have you been with this concern that you are now connected with?

A. It will soon be four years.

Q. It will soon be four years?

A. Yes, sir.

Q. Did you become an officer or become connected with the company in 1929?

A. No, I was not. Which company?

[fol. 474] Q. Well, United Gas Public Service Company.

A. United Gas Public Service Company was not in existence in 1929.

Q. When did it come into existence?

A. I don't know the exact date.

Q. Well, were you connected with Moody-Seagraves?

A. No, not in 1929.

Q. When did you become connected with that concern?

A. Moody-Seagraves?

Q. Yes.

A. I was not connected with Moody-Seagraves.

Q. Which company are you with?

A. I am with the United Gas Public Service Company now.

Q. You went with that company when?

A. In 1930.

Q. They were in existence, then, in 1930?

A. Well, the group that now comprises it was, yes, sir.

Q. You were an officer in the Southern Gas Company in 1929, were you not?

A. No, sir.

Q. When did you become an officer in that company?

A. Something over a year ago, I believe.

Q. You don't recall the date?

A. Not the exact date; about a year or a year and a half ago, I said.

Q. So you have been with this gas concern about four years in the gas business?

A. With this particular company.

Q. Who were you with before that time—what gas concern?

[fol. 475] A. With the Magnolia Gas Company.

Q. It is a subsidiary of the Magnolia Petroleum Company?

A. It was at that time, but is now a part of this system.

Q. United Gas Public Service Company has purchased the Magnolia Gas Company; is that it?

A. Yes, sir.

Q. When they purchased Magnolia Gas Company you came with the United Gas Public Service Company?

A. That is correct.

Q. Now, Mr. Abernathy, do you know of a contract in existence between the company of which you — a director, the Southern Gas Company, and the United Gas Public Service Company for the sale of gas at the Jim Hogg Junction—the sale of gas from Southern Gas Company to United Gas Public Service Company?

Mr. Coates: Objected to for the same reasons heretofore stated.

The Court: All right.

Mr. Coates: And having no bearing on any issue in this case.

The Court: All right.

Mr. Bobbitt: Do you sustain the objection, Your Honor?

The Court: No; I overrule the objection.

Mr. Coates: Note the exception.

Q. Do you know of that contract?

A. What is the question?

[fol. 476] Q. The contract between Southern Gas Company, of which you are a director, and United Gas Public

Service Company for the delivery of gas at Jim Hogg Junction?

A. I don't believe I know of such a contract.

Q. You don't believe you know of such a contract?

A. No.

Q. I believe you testified you are a director in the Southern Gas Company?

A. Yes, sir.

Mr. Coates: I believe he did, Mr. Bobbitt.

The Court: Go ahead, Gentlemen.

Mr. Coates: I will stipulate that with you.

Mr. Bobbitt: All right. We will stipulate a plenty.

Q. I believe you testified this morning that the supply of gas was being depleted in the Carolina-Tex. field as one of the reasons for the contract you testified about—the six cent contract?

A. I believe I said the supply that Southern Gas Company had at that time was depleting, yes.

Q. Well, you didn't mean that the potential gas supply in the area available was being depleted—you didn't mean that?

A. Well, all of the sands in sight at that time were depleting.

Q. Were depleting?

A. Yes, sir.

Q. You mean they were taking gas from them, but weren't [fol. 477] new wells being brought in in that area?

A. Well, there were some new wells brought in, yes, sir.

Q. There is a larger taking of gas in the Carolina-Tex. field now than there has ever been; isn't that true?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No; I don't think it is.

Q. What about the Bruni field?—isn't there a larger taking of gas from the Bruni field than there has ever been at any time heretofore in your knowledge?

A. No, I don't know that it is true.

Q. You don't know about it. Now, you testified about the Pescadito Junction and Jennings Junction transmission line, about these hot spots along that line, this morning. I don't know that I understood just how many of those hot spots along that line, if you know?

A. Well, I don't know the exact number.

Q. You never made any personal inspection of it?

A. Only parts of it.

Q. Well, what parts did you inspect?

A. I have been over parts of the line.

Q. How is that?

A. I say, I have been over parts of the line. I have not made any actual inspection of the entire line.

Q. Well, which parts have you been on, Mr. Abernathy?

A. Well, I have been on the part of the line towards Pescadito and that area and on the southern end of the line.

Q. How far in that area at Pescadito Junction have you inspected that line for hot spots?

A. Well, I have not made any particular inspection for hot spots on it.

[fol. 478] Q. You haven't made any inspection?

A. No.

Q. You haven't been all along the line—you just saw the end of it at Pescadito and you saw the other end of it?

A. Yes.

Q. That is the extent of your inspection?

A. I said I had been on the line. I haven't inspected it for hot spots.

Q. What you testified about the hot spots along the line and this condition of the pipe is what somebody told you?

A. Well, I know the condition of the pipe, and the work that it has been necessary to do on the line from inspection reports.

Q. But you have testified that you made no personal inspection of it?

A. That is correct.

Q. There being hot spots along that line, Mr. Abernathy, and you not having made any personal inspection of that line, you don't know of your own knowledge anything about the capacity of that line to transport gas at this time, do you, of your own knowledge?

A. Yes; I know something about it.

Q. What do you know about it of your own knowledge—not what somebody told you?

A. I know we are putting gas in it, and we are taking gas out.

Q. You know you are putting gas in it, and that you are taking gas out?

A. Yes.

[fol. 479] Q. Is that all you know?

A. And transporting gas through it.

Q. And is that all you know about that line?

A. Well, I know generally the general condition of the line, yes.

Q. You don't know how much gas you are putting in that line, and how much you are taking out?

A. I don't have the exact figures before me—just approximately.

Q. What you know about it somebody has made a report to you of the gas that is being put in and the gas being taken out?

A. I haven't actually seen the gas come out of the line, if that is what you mean.

Q. Do you know what pressure that line could stand—what gas pressure, of your own knowledge?

A. You mean at what safe working pressure the line could be operated?

Q. Yes; whether it could be operated as a practical proposition—do you know what pressure?

A. At what point?

Q. At any point. It would not be any stronger than the weakest point in the line.

A. Yes; I know approximately, yes, what would be a safe pressure on the line.

Q. What is a safe pressure on that line approximately?

A. I think you could work the line up to possibly 200 to 250 pounds.

[fol. 480] Q. You could work it up to that?

A. Yes; I think so.

Q. What do you mean by working it up to that?

A. I mean it could be operated at those general pressures. It would possibly have some leaks in it that would have to be repaired.

Q. In its present condition?

A. I say there possibly would be some leaks occur that would have to be repaired—hot spots.

Q. You don't know the extent of the leaks, or how many?

A. No; that would be impossible.

Q. As far as you know, there might be several hundred?

A. No; I don't think so.

Q. Now, Mr. Abernathy, I would like to ask you about the cost of the transportation of gas for industrial purposes from the Carolina-Tex. field to the City of Laredo city gate

and to the plant of the Central Power & Light Company in Laredo. You are superintendent of transportation of the United Gas Public Service Company?

A. Uh, huh.

Mr. Coates: We object to that as repetition.

The Court: Go ahead.

Q. Take the price of gas, Mr. Abernathy, in the Carolina-Tex. field at four and five cents a thousand, as testified—take into account every element of cost that the company incurs in transporting a million cubic feet of gas per day, say, the 1st of January, 1934, from the Carolina-Tex. field to the [fol. 481] plant of the Central Power & Light Company in the City of Laredo, and tell us what it costs the company in addition to the purchase price to deliver that gas to the Central Power & Light Company.

Mr. Coates: We object. No proper predicate laid, and because the question is not capable of an intelligent answer.

The Court: The objection is overruled.

Mr. Coates: Note our exception. Are you asking him to make a computation and give it to you.

Mr. Bobbitt: I am asking his opinion and judgment.

The Court: I understood you to ask him if he knew what it cost. Read the question, Mr. Reporter.

(Thereupon, the Reporter read the last preceding question as follows: "Q. Take the price of gas, Mr. Abernathy, in the Carolina-Tex. field at four and five cents a thousand, as testified—take into account every element of cost that the company incurs in transporting a million cubic feet of gas per day, say, the 1st of January, 1934, from the Carolina-Tex. field to the plant of the Central Power & Light Company in the City of Laredo, and tell us what it costs the company in addition to the purchase price to deliver that gas to the Central Power & Light Company."

Mr. Coates: We object to it, because the proper predicate is not laid by showing that the witness knows and can make such a calculation.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

[fol. 482] The Court: The question is if he knows.

A. The cost, in my opinion, per million feet, would be the cost of operating the line divided by the amount of gas passed through the line.

Q. Do you know what that would be?

A. No; I don't. It would depend on the amount of gas passing through.

Q. On the amount of gas passing that day?

A. Yes; or at any time you made the computation.

Q. We will say, Mr. Abernathy, that two million cubic feet a day was transported for other purposes, and then a million feet in addition was transported under the conditions stated, can you compute what it would cost the company?

Mr. Coates: Our same objection.

The Court: The question is, can he compute it.

Q. I believe you stated that was the method you would have to use?

A. No; because I don't have the necessary figures to compute it.

Q. Couldn't you take the two million cubic feet as transported? What other necessary figures are required for you to make that computation?

A. You would need the cost which entered into that.

Q. Do you know what that is?

A. Not offhand.

Q. Could you get that for us?

A. Well, I think that the testimony has been introduced as to the operating——

[fols. 483-578] Q. I am not asking you what has been introduced. I say can you get those figures for us that are necessary for you to compute it?

A. I think I could, yes, sir.

Q. Will you try to do that?

A. Yes.

Q. Aren't you certain that you can get the figures and make the computation for us?

A. Yes; take the operating costs, and simply divide by the figure given——

Q. And you will do that?

A. Per million feet at that particular time.

Q. Well, will you get that for us and have it tomorrow morning?

A. I am not certain I can get the figures in that time.

Q. But if you can get them you will have them tomorrow morning. I am not suggesting any unreasonable request, I think. If you can get the figures, you will do it?

A. Yes, sir.

Q. Thank you, if you will do that. I believe that is all for the present.

The Court: Gentlemen, we will take a few minutes recess.

(Thereupon a ten minutes recess was taken by the Court.)

[fol. 579] Testimony of P. McDonald Biddison

Questions by Mr. Bobbitt:

Q. Mr. Biddison, you are now employed, at this particular time, by the United Gas Public Service Company?

A. I am not. I am retained only for the specific purposes of this case.

Q. You are retained for the purpose of giving your testimony in this case?

A. Yes.

Q. And not in any other capacity?

A. That is correct.

Q. I believe you testified you opened an office in Dallas, in 1930?

A. Yes.

Q. And you still maintain that office?

A. Yes.

Q. You live, however, do you not, in Louisiana?

A. I have a home in Louisiana, but my residence now is in Dallas.

Q. Since 1930, your principal business has been testifying [fol. 580] in rate cases?

A. No, sir, it has not.

Mr. Coates: We believe, if the Court please, if this line of testimony has any purpose, it would be for impeachment, rather than testing his qualifications.

The Court: I agree with you.

Mr. Coates: And we object to it for that reason.

The Court: Sustain the objection.

Mr. Bobbitt. I don't want to ask any questions against the ruling, of course——

The Court: You may ask any questions touching his qualifications.

Q. You are not now and have not recently been employed by any gas distribution company, in the capacity of an engineer, in connection with their line of business?

A. Not directly by a distribution company since 1930, no. Indirectly, however, I am consulting engineer for all purposes to a large group of distribution properties embracing something like a quarter of a million consumers.

Q. Are you employed by the Lone Star Gas Company?

A. No, sir. I am retained by the Lone Star Gas Corporation, for consulting engineering purposes, in any capacity in which my services may be desired, by themselves or by their subsidiary or affiliated companies.

Q. But you are not engaged by any of these companies as an engineer in connection with the actual distribution or sales of gas?

[fols. 581-597] A. I am engaged, as I stated, by the Lone Star Gas Corporation for the purposes of consultation for any and all of their affiliated and subsidiary companies, for any and all purposes.

* * * * * * *

[fol. 598] A. I have no information at all as to the actual cost of these properties, from any source.

Q. That's what I asked you; you have no information at all as to what was actually paid in the construction of these properties?

A. None whatever.

Q. None whatever. Now you took what's handed to you in an Exhibit or what is told to you by someone else, and base your testimony on that, together with your experience in other properties?

A. I have not testified at all as to what these properties [fol. 599] cost and made no statement in regard thereto, except to state that I do not know what they cost.

Q. But in arriving at your conclusions here as to what you thought this going value allowance should be, you took into account the figures and costs and so on, that someone else had furnished to you?

A. As to its ratio; as to the ratio being existent between going value and construction costs, I used my own opinion and my own information. But as to the figure to which that ratio should be applied, I cited a figure of about $1,200,000.00, which is an approximation to the figures set up in the exhibits prepared and sponsored by Mr. Greene.

Q. But, as I say, you don't know anything about the accuracy of those figures at all? You took Mr. Greene's figures, that $1,200,000.00?

A. For that specific purpose, I took Mr. Greene's figures, yes.

Q. Well, that is what I am asking you. And you base your testimony or your estimate as to what in your opinion ought to be allowed as a separate item of going concern value, on a certain percentage of the cost of the property; that is true, isn't it?

A. Yes, I specifically stated ten per cent was my idea of the minimum of going concern value for a property of this sort.

Q. I believe you stated the ratio sometimes varies from ten to twenty per cent; as high sometimes as twenty per cent?

A. I have so stated, yes.

[fol. 600] Q. Isn't it true, Mr. Biddison, that in some cases there is no separate allowance for going concern value considered or allowed?

A. I believe that to be correct.

Q. Well, don't you know it to be correct?

A. Yes.

Q. It ranges then, according to your testimony, from nothing whatsoever up to as high as twenty per cent of the cost of the property?

A. No, sir; it does not. It ranges, according to my testimony, from ten to twenty per cent.

Q. Well, didn't you just say in some instances that no allowance at all is made or considered for going concern value?

A. Yes, but that——

Q. Well, then, doesn't it range from nothing or no allowance, to as high as twenty per cent?

A. No, sir; the fact that it has not been estimated in some cases or has not been allowed in some cases, is no criterion of what it may be when it exists.

Q. Well, if it does not exist, where it is not allowed, it just doesn't exist; is that right?

A. That's right.

Q. And instances where it does not of course exist, it just does not exist?

A. That's right.

Q. Yes, and you put in your opinion, and from an [fol. 601] examination of the figures given to you by other parties, it is your opinion it does exist in the Laredo properties?

A. It is my opinion that it does exist in the Laredo properties.

Q. In your opinion, to the extent of ten percent?

A. Yes—minimum.

Q. And that is based upon, as I believe if I understood you correctly, upon the continuous, general use of the commodity—gas, in this instance; is that correct?

A. Among other things, yes.

Q. That is one of the main features?

A. That is one of them, yes.

Q. What do you mean by continuous, general use?

A. Well, it has been in use down there in Laredo since along about 1910, and it is in use down there now; and it is in quite general use as shown by the relative number of meters as compared to the population and it is in quite general use as shown by the comparison of gas meters to water meters.

Q. Well, if the company would cease furnishing gas and go out of the gas business, and if its property is still there, there would be no continuous, general use, so far as that company is concerned, of the commodity, would there?

A. I presume not.

Q. And there would not be any going concern value inhering in that particular property, would there?

A. Not if they abandoned service, I don't think there would be.

Q. And if the company did not hold a franchise, for instance——

[fol. 602] Mr. Coates: Now just a minute; I want to make an objection to that line of questioning.

(Jury was excused during discussion of the objection.)

Mr. Coates: We object to this question and to any line of questioning seeking to elicit from this witness any information predicated upon the proposition of the expiration of franchise or seeking to get, by inference and innuendo, before this jury, the fact that the gas franchise of the company in Laredo has expired, for the following reasons: First, because such testimony is incompetent and prejudicial testimony in this case, and second because it has no material bear-

ing on any issue made in this suit, which is one brought by the plaintiffs here to force this company to continue to render its service at the rate prescribed by the Commission.

Now then, here is our view of the law with respect to that point.

The Court: Mr. Coates, if I am wrong in my ruling, I think I would be wrong day after tomorrow, because I have my own views about this matter, regardless of what this witness or any other witness may say about it. The objection will be overruled.

Mr. Coates: Will you hear from me for about two minutes?

The Court: Yes, and longer than that if you like.

Mr. Coates: I say, and I can bring you sufficient authorities, and abundant authorities to bear me out in this if the court desires, that the courts have specifically held, in [fol. 603] determining the existence of, or the measure of or amount of going concern value, that neither franchise value, franchise, good will or any of those things may be taken into account. I think it has been further held and specifically held in the Denver water case, which is in either 244 or 246 U. S. that in a case relating to the reasonableness of rates prescribed by a regulatory body, that the value of the property on which those rates are based, in any action brought to compel continued service at those rates—the fact that the franchise has expired and that they have no franchise, can not be used to depress any element of value used as a basis of value for the fixing of the reasonableness of the rates at which they are seeking them to continue to serve, and for this practical reason: A governmental authority cannot on the one hand withhold from the company that which gives it the right for a stated time in the future to continue to furnish service, and on the other hand, by withholding this right, depress the value of the property upon which the rates are based and at which rates it compels this company to serve. Where they are seeking to enforce a rate by this character of action, by their action and by such consent, they give this company the right to continue to serve, and you can not make rates compensatory which would otherwise be confiscatory by withholding from them the franchise, and thereby depressing the value of the property. Have I made myself clear on that?

The Court: Yes, I understand you, and I can agree with [fol. 604] you fully and still maintain the position I have taken in this matter. The objection will be overruled.

Mr. Coates: Note our exception to the ruling of the Court.

(The jury returned to the jury box.)

Q. If the company did not or does not hold a franchise, authorizing it to continue the business and the general use of gas and gas service, there would not be any element of going concern value inhering in that particular property; isn't that true?

A. There would be, if the other requirements which establish going concern value were not voided for other reasons. I do not hold, or do not believe that the holding of a franchise or a failure to hold a franchise establishes or disproves the existence of going concern value; it may modify the amount of going concern value.

Q. Mr. Biddison, I believe you testified before the adjournment for lunch, that under the item of general expense, taking the figures from the exhibit there, that you testified from, that it showed that 18 percent had been allowed for general expense?

Mr. Coates: I believe he said general construction expenditures, Mr. Bobbitt.

The Court: Well, the witness will correct him.

A. Slightly under that, Mr. Bobbitt.

Q. And I believe you said you considered that very reasonable?

A. Yes.

Q. And I believe you testified that often these items were [fol. 605] greater than that, running as high as twenty or twenty-five percent?

A. Yes.

Q. Isn't that in the case, Mr. Biddison, of the organization of companies or establishments that pay high promotion fees and high salaries in the organization of such concerns?

A. Not necessarily so.

Q. Not necessarily so, but often so, isn't it?

A. It may be in the case of those companies or in the case of companies which have not indulged in those practices.

Q. I believe you said you never made any inspection or investigation of these Laredo properties?

A. Not to make an inspection to determine their condi-

tion; however, I have seen the properties, of course, but not to make a report on the condition of the property.

Q. You made some investigation; I understand that, but you made no investigation or made no report on any of the properties?

A. No reports.

Q. Then how do you know that the present percent condition of the properties to which you testified reflects the correct percent condition of the properties?

A. I did not make any statement in regard to its condition.

Q. Didn't you testify as to what the percent condition of these properties was in your opinion?

A. No sir, I did not.

Q. Then you have no opinion on that point at all?

A. Yes, I have.

[fol. 606] Q. What is it based on?

A. It is based upon testimony that has been given or information I have had, and I think it was brought out in the testimony, although I am not sure of it, as to the amount of unaccounted for gas, very largely, and in addition, as the results of inspection of a large number of other operating properties.

Q. You could not tell the actual condition of these properties here by inspecting properties in North Texas or up in Kansas, could you?

A. No, and I have made no statement on it, either.

Q. And you do not know of your own knowledge anything about the percent condition of the physical properties involved here?

A. No. I have an opinion on it.

Q. Yes, and I asked you what it was based on—what that opinion was based on.

A. And I answered the question.

Q. Well, will you answer it again?

A. Yes, it is based upon the relative amount of unaccounted for gas in the system, and upon the condition in which I quite often find similar properties upon inspection, and I have inspected a large number of other properties.

Q. And so you are basing it now, upon testimony as to the unaccounted for gas. Now then, do you recall any testimony in this case, and you have been here for a good little bit, any testimony in this case about the item of unaccounted for gas?

A. I think it was testimony. I said that I think it was [fol. 607-617] testimony but I am not sure whether it was testimony or merely information.

Q. What kind of information was it?

A. Information as to the amount of unaccounted for gas per mile of three inch equivalent line.

Q. Was there any testimony here about that?

A. I am not sure it was testimony, or whether it came to me through other sources of information.

Q. Other sources of information?

A. That's right.

Q. I don't know about—I don't want to take up too much time about this, but you are not certain whether that was testimony or whether you got the information from some outside source about it?

A. That is still correct.

Q. That is still correct, yes. But your information as to the percent condition comes from some information from some source about the amount of unaccounted for gas?

A. Yes.

Q. And that is the basis of it?

A. And, as I stated, in addition, the result of inspection on a large number of other similar properties.

Q. How do you know that the character of the soil and the age of the pipe and so forth was the same in these other properties as in the Laredo properties?

* * * * * * *

[fol. 618] Questions by Mr. Fitzhugh:

Q. Mr. Biddison, in Exhibit 9, which I believe you say you checked,—do you find the costs included in that exhibit for [fol. 619] removing or relaying paving, in connection with the reconstruction cost new appraisal or estimate?

The Court: I thought the questions would be directed to going concern value.

Mr. Fitzhugh: I will bring that in, if the Court please.

The Court: Mr. Fitzhugh, if you know where that is in the exhibit, direct his attention to the page.

Mr. Fitzhugh: Your Honor, I don't think there is any in there. I just want him to verify that fact.

A. No, I think there is nothing in there under that heading.

Mr. Coates: If you are asking for that information, I think I can give it to you.

Mr. Fitzhugh: I am just asking the witness.

Q. What is your conclusion on that point, Mr. Biddison,—if there is or is not?

A. That there is not any allowance for paving.

Q. Now, it is a fact, is it not, Mr. Biddison, that the main streets in the business section of Laredo and the streets in the better residential sections of the city of the present time are all paved?

A. A great number are paved.

Q. Yes, sir, and in order to lay in a system in the streets of Laredo at this time, if the property were being reconstructed as of this date, it would be necessary to take up [fol. 620] paving and relay it——

A. Yes, sir.

Q. — after the lines had been put in,—isn't that true?

A. That is correct.

Q. How do you account, Mr. Biddison, for the fact, then, that they left out the cost of removing and relaying pavement in the reconstruction cost appraisal as submitted by the Company?

A. I don't know that I can thoroughly account for that. I know of reasons why it may have been done, but I am not certain that they are the reasons why it was done.

Q. Don't you know, Mr. Biddison, that they had to be left out in line with the United States Supreme Court's decision, because such costs have not been historically incurred in the building of the Company's plant?

A. No, I don't know any such thing. On the contrary, there is a rather arbitrary rule adopted in reproduction estimates, based upon a decision of the United States Supreme Court, by which it is customary to include in the reproduction cost estimate the cost of replacing such paving as was historically removed and replaced.

Q. It is your opinion then is it, Mr. Biddison, that the appraisal as submitted by the Company should be increased by the amount of paving which actually, as a matter of historical fact, was taken up and relaid in the building of [fol. 621] the Company's properties?

A. I think the estimate could well be increased by that amount, yes, sir.

Q. And in line with the facts as they actually occurred, historically?

A. Yes, sir.

Q. Now, if you are willing to consider the history of the Company in that respect, Mr. Biddison, shouldn't you be equally as willing to consider the history of the Company with respect to going value?

A. No, I am only willing to follow the rule which I stated in valuation with respect to paving over mains, because that rule has resulted from a decision of the United States Supreme Court.

Q. Well, I am speaking now simply of the pure and simple logic of the situation. Is there any reason why you should consider in one item of property the historical facts as they actually occurred, and absolutely disregard them for all purposes in regard to some other kind of property?

A. Yes; the difference is in one case we have a decision of the United States Supreme Court by which we are bound to be guided; in the other we have no such decision.

Q. Well, leaving aside for the moment the consideration of the court decisions on the matter,—is there any reason in [fol. 622] logic, as you can see it, why there should be that distinction in the two ways of proceeding?

A. No, as a matter of logic it is my idea that the history in a reproduction estimate should be disregarded in both cases.

Q. At least in your remarks about going value you do not intend to have it understood that you have considered in any way the history of the Company and its past experiences, in finding that amount?

The Court: Gentlemen, I believe this witness has at least three times recited to you the elements upon which he fixes going value,—absolutely named them over and over. So why ask him again?

Mr. Fitzhugh: All right.

Q. Now, Mr. Biddison, do you know how the Company keeps its books?

A. Only from what has been testified here.

Q. Do you know whether the Company charges the cost of attaching customers, if there are any such costs, as an operating expense or as a capital expenditure?

A. I don't know.

Q. Don't you know, as a matter of fact, Mr. Biddison, that none of the costs in connection with the training of personnel, acquiring of new business, acquiring new customers, ac-

quiring the operating records of the Company, or any of the costs that are ordinarily considered as entering into or [fol. 623] making up going value, have not been capitalized on the books of the Company?

A. I don't know anything about what has been capitalized on the books of the Company.

Q. Now, granting for the moment, Mr. Biddison, that none of those costs have been capitalized, and assume that to be a fact, would that make any difference whatsoever in your estimate of the allowance to be made for going value?

A. None in the world. I conceive that if a going value exists it is the property of the Company, no matter how acquired. A possession of mine has a value not fixed by the method by which I obtained the possession, but by what it would cost me to replace the possession; and if that possession be taken away from me by some superior force I am robbed; no matter whether that possession came to me as the result of my own handiwork, by purchase, by gift, or by inheritance—it is mine.

Q. But suppose the gas consumers, Mr. Biddison, have been paying as part of their operating expenses covered by the rate on through the years the cost of building up all of this going value, do you think that it would be in any way prejudicial to the Company to now exclude that value from the rate base?

Mr. Coates: The same objection we made a while ago is made ——

The Court: That is the same question asked by Mr. Bob- [fol. 624] bitt a while ago, and when I sustained the objection he withdraw it?

Q. Now, I believe you accepted the figures as testified to by Mr. Stein for the number of customers?

A. Yes, sir.

Q. What was that figure, four thousand five hundred and something, was it not?

Mr. Bobbitt: About forty-eight hundred.

A. Gas meters as of January 1st, 1934, in Laredo, 4775.

Q. Now, suppose, Mr. Biddison, that instead of the number being exactly that, that it had been reduced by exactly one thousand customers, what difference would it have made in the amount you found as the going value?

A. I don't know; I would have to make a calculation on that to determine it.

Q. Would it have had any effect at all?

A. Yes, I think it would.

Q. It would have reduced your allowance for going value, wouldn't it?

A. Yes.

Q. But you couldn't say what amount?

A. No.

Q. Now, suppose, Mr. Biddison, that the Company should decide to-day to move Mr. Stein, who is now the manager of the Laredo plant, and, say, all the personnel in the office of [fol. 625] the Company at Laredo, to some other location on the Company's line, and say that the new personnel incoming, to run the operations in the city of Laredo, would be inexperienced,—what difference would there be in the going value as of this date that you would find for the Laredo system?

A. It would make some difference in the going value, if you are starting off with a new and inexperienced organization. I can't give it to you in figures.

Q. Well, as a capable measurement.

A. Well, I don't think that it is capable of definite determination in dollars.

Q. Well, I don't think that it is capable of definite determination in dollars.

Q. All of these things are rather indefinite, aren't they, Mr. Biddison?

A. You can make an approximation to it. In general, it costs you from twenty-five to seventy-five per cent of an annual payroll to properly train and coordinate a group of employes in new duties.

Q. Is the fact that the Company has at Laredo operating records and accounting records an item which enters into going value?

A. Yes, it is an item that proves the existence of a going value.

Q. Now, suppose the Company had not as of this date those records, what difference would you make in your per [fols. 626-631] cent figure for an allowance to going value at Laredo?

A. I don't know; it might make some very slight difference, but it would be very small.

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[fol. 632] Testimony of A. W. GREENE

Recross-examination.

Questions by Mr. Lange:

Q. Mr. Greene, you prepared the Exhibit marked Defendant's Exhibit 9—inventory and appraisal of this Laredo property?

A. Yes, sir; it was prepared under my supervision.

Q. Under your supervision?

A. Yes.

Q. What amount of time was devoted by you in the Laredo area in preparing that exhibit?

A. I was down there possibly three or four days during the preparation of the original inventory, and have been on the property a great many times since.

Q. Did you, in preparing this inventory and appraisal, make any changes as far as the pricing out of various items from that which you filed in the hearing before the Railroad Commission?

A. There are some minor changes.

[fols. 633-642] Q. Are there very many of them that you can point to?

A. No, sir; there are not very many, and those that are—the changes that have been made are slight in the pricing.

Q. Are the changes very many in the totals?

A. No, sir; except that the total that appears on the summary sheet has incorporated in it the changes that we made in the exhibit near the close of the Laredo hearing.

Q. And this appraisal, of course, is based on the reproduction cost new method, and of course, has no bearing or connection with any historical cost of the property?

A. No, sir.

* * * * * * *

[fol. 643] Q. Mr. Greene, in your transmission part of the appraisal, I believe you stated that you included in that [fol. 644] appraisal this line marked Mirando City—Oilton line, beginning at Aguilares, in a southwesterly direction to Mirando City and Oilton?

A. Yes.

Q. Does any gas flow through that line from Oilton or from Mirando City toward Laredo?

A. There is none flowing at this time from Mirando City or Oilton toward Laredo.

Q. Did any flow through that line toward Laredo last year?

A. No, sir; not for several years.

Q. Not for several years?

A. No, sir.

Q. Where does that line appear in your transmission part of the appraisal?

A. It appears in the section beginning on page 84. The section begins on page 84 but it is on page 91.

Q. Aguilares to Oilton—the total depreciation, the depreciated cost of that, according to your appraisal, is $36,439.00?

A. That is correct.

Q. What part of that—or is all of that charged to the Laredo area?

A. No sir; on the basis of this appraisal about 70 percent is charged to Laredo.

Q. 70 percent of the $36,000.00.

A. 71.29 percent was charged to Laredo.

Q. Now, does your appraisal give the gas wells connected to the gathering system in the—where is the gather-
[fol. 645] ing system that you have in your appraisal located?

A. Near the junction of the Pescadito-Jennings line, and the Bruni to Roma line.

Q. In other words, it is in a northwesterly direction of the Jennings Junction?

A. It is in a northwesterly direction, and in Exhibit No. 9 we have also included the lines in a southeasterly direction.

Q. Those that are southeast of the Jennings Junction?

A. Both of them, yes.

Q. Now, where is the first—the one that is Northwest of the Jennings Junction—where does that appear in that exhibit?

A. The section begins on page 19, and the lines are detailed following that.

Q. Now, the total appearing at the bottom of page 19 is $10,495.00 and that is the total charged to Laredo, isn't it?

A. That is the total that is charged to the Laredo sector; 71.29 percent of that is charged to within the city of Laredo.

Q. And why is the other part not charged to Laredo.

A. The remaining percentage has been allocated out on an M. C. F. basis of the gas deliveries within the Laredo city gate.

Q. What percent, if any, has been allocated to the Roma line?

A. 70 percent of the total valuation of the gathering lines in that area.

Q. Now then, can you give us the wells attached to that gathering line in the West Jennings, the one we just spoke of?

A. Mr. Lange, I haven't got those wells at this time.

[fol. 646] Q. Can you get those lines?

A. I have the amount of pipe in here, but I do not have the names of the wells.

Q. In your former appraisals, did you have the wells listed?

A. I did. I did not have them listed, but I gave them to you off a map I had.

Q. You do not have that map available?

A. Not right at this moment, no sir.

Q. But you can get it?

A. Yes.

Q. I will ask you at this time, is Jennings No. 10 attached to that gathering system?

A. Jennings No. 10 is attached directly in to the main line, and is not included in Exhibit No. 9.

Q. Where is that well attached, with reference to the lines on this map.

A. It is north and west of the junction between the Jennings-Pescadito line and the Bruni-Roma line.

Q. That is the line running in a northeasterly direction from Jennings Junction on this Map No. 2?

A. Yes.

Q. Checkered——

A. No sir; it is running northwest from Jennings Junction, the Pescadito-Jennings line.

Q. I wanted to mark on the map exactly.

A. Mr. Lange, I cannot spot that exactly but it is in the [fol. 647] vicinity of this area right there.

Q. Is it east about half an inch of the figure marked 12 on this map 2, approximately?

A. Approximately, yes.

Q. You say it is connected directly with the Jennings-Pescadito line?

A. Yes.

Q. It is not connected with any gathering line?

A. No, sir; it is tied directly into the Jennings line.

Q. That is a company owned well, isn't it, Mr. Greene?

A. Yes.

Q. Do you know the amount of gas taken out of that well last year?

A. No, I do not.

Q. Or the 12 months ended December 31, 1933?

A. No, sir I do not.

Q. Who would have that information.

Mr. Coates: Mr. Lange, I think Mr. Womack has already given you those volumes, hasn't he?

Q. He has given us the volumes, yes, but not the price. Do you know what the price of that gas was, that flowed to Laredo out of that well?

A. No, sir, I do not. That is our own production, and I don't think any price has been assigned to it.

Q. Do you know how much of that gas flowed towards Roma?

A. No, I don't, Mr. Lange.

Q. Mr. Greene, turning to your transmission section again, [fol. 648] where does the portion of the transmission line known as the Jennings-Pescadito line, appear?

A. On page 94 of Exhibit 9.

Q. Is that the beginning or is that the total; where is the total reflected of that section of the line?

A. On page 94.

Q. $168,699.00?

A. The total is on page 95.

Q. Yes, and that is $169,528.00—that is the total depreciated cost?

A. Yes, that is correct.

Q. And the amount allocated to Laredo is $153,485.00?

A. Yes.

Q. Now, with reference to this map No. 2 Mr. Greene, is that the line appearing on this map from the point Marked 2, extending southeast to the point marked 3 on this map, for a total of 26.68 miles?

A. Yes, that is correct.

Q. Of six inch pipe. Mr. Greene, how did you arrive at the present percent condition of that line, to give it a percent

condition of 85 and 86; that's what you give it, don't you—take the lines as they appear on page 94?

A. Yes.

Q. How did you arrive at that percent condition?

A. By inspections at one mile intervals along the entire length of the line.

[fol. 649] Q. Were those the inspections that you made with Mr. McGary?

A. Yes.

Q. And as were testified to before the Railroad Commission?

A. Yes.

Q. When were those inspections made—over what period of time, Mr. Greene, if you know?

A. I believe they were made in March, 1932.

Q. Just exactly how did you go about making those inspections?

A. The inspections were made at each mile post.

Q. At each mile post?

A. Yes.

Q. And what was done at the inspection point?

A. There was a hole dug out to uncover the pipe and get beneath the pipe, and the coating was inspected and scraped off, and the pits, if any, were measured with a pit micrometer.

Q. And after you had made your total inspections, you would give each of those mile posts a percent condition; is that it?

A. Yes, at each mile we would write the percent condition at that point.

Q. Now, what part of this line has been reconditioned or what part has been taken out since the time you made that inspection?

A. There has been approximately 40,000 feet of it, I believe sir.

Q. Exactly what is done when pipe is reconditioned?

A. It is removed from the ditch and cleaned, first by removing the coating and then by sand blasting, and the pipe was then primed and relaid or restrung and welded and coated.

[fol. 650] Q. How many sections or how many feet of pipe were taken out that were not replaced?

A. I would not be able to answer that.

Q. Approximately?

A. I don't know.

Q. You don't know.

A. No, sir.

Q. Well, who would be able to give us those figures, the approximate number of feet of pipe that were taken out of that line during that reconditioning period, and not put back?

A. I think I could get that information.

Q. Will you please get it?

A. Yes.

Q. Since the time that you and Mr. McGary made an inspection of that line, Mr. Greene, you have not had occasion to see it any more?

A. Yes, I have been on the line since that time.

Q. When was that—since your reconditioning of it?

A. The last time I was down there was about November, 1933.

Q. Was that after they had finished this reconditioning work that they had been doing?

A. Yes, the reconditioning work was completed at that time.

Q. Do you know the amount of gas that has been transported thru that line during the calendar year ending December 31, 1933, towards the Laredo area?

A. No, I do not know the quantity.

[fol. 651] Q. Do you know what pressure that line would stand, taking gas delivered to Laredo?

A. No, I would not know that offhand. Mr. Abernathy testified he could operate it at 240 to 250 pounds, I believe.

Q. 240 or '50 pounds pressure?

A. Yes, I believe so.

Q. Whether or not a transmission line will practically carry gas depends after all on the amount of pressure and not the amount that flows through?

A. How is that.

Q. As to whether or not a transmission line will serve practically, depends on the amount of the pressure put on the line, and not on the amount that passes through; isn't that correct?

A. The amount of pressure usually governs the amount that flows through.

Q. And Mr. Abernathy stated it would stand 200 to 250 pounds pressure; isn't that correct?

A. I think he said 240 to 250.

Q. When you had occasion to see this line last November, did you notice any leaks in the line?

A. No, I did not.

Q. And when you and Mr. McCary made that inspection of which you just spoke, you just were making an inspection at each mile post?

A. That is correct.

Q. You did not attempt to notice the condition of the line [fol. 652] at any other point?

A. Yes, we looked at the line all the way along, at places where we could, except that we only made notes or recorded our notes at the mile posts.

Q. At the mile post, and you would give each mile post a certain percent condition?

A. That is correct.

Q. Do you know how often, if at all, that Pescadito-Jennings Line was used during the twelve months period ending July 31, 1932?

A. No, I wouldn't know that.

Q. In transporting gas toward the Laredo area?

A. No, sir.

Q. Or in the 12 months ending December 31, 1933?

A. No, I wouldn't know that either.

Q. Or in the year 1930 or 1931?

A. No, sir.

Q. Mr. Greene, is there a Mr. Worsley connected with the United Gas System as an engineer?

A. Yes.

Q. What are his initials?

A. J. E.

Q. Mr. J. E. Worsley?

A. Yes.

Q. Isn't it a fact that he made an appraisal of these properties about the year 1929 or 1930 for the company?

A. Not to my knowledge, Mr. Lange. I don't believe he [fol. 653] did. He might have made some sort of a horse-back appraisal on it.

Q. What do you mean by a horse-back appraisal.

A. I mean one where you don't go out and get an inventory and just where estimating is done by rule of thumb. I don't know whether he did or not, but I am positive he did not make an actual appraisal and inventory of the system.

Q. What was the extent of his appraisal?

A. I don't know.

Q. You just stated he made a horse-back appraisal.

A. I said if he made one it was a horse-back appraisal, but I am not familiar with any appraisal he ever made of the line.

Q. Did you ever see one he made?

A. No, sir; I have not.

Q. Is he still in the employ of the company?

A. He is, yes.

Q. What is his capacity?

A. He is an engineer.

Q. What has been his experience in valuation work?

A. I think he has had a lot of experience in valuation work.

Q. Now, the first appraisal that you filed in the hearing before the Railroad Commission, Mr. Greene; I believe at that time you stated that through error you included a gathering system in the Carolina-Texas field?

A. Well, I don't know, sir.

Q. I mean when you filed your first appraisal, you subsequently filed a correction sheet, taking out that gathering [fol. 654] line; is that not a fact?

A. No, I don't believe so. I do not recall that.

Q. What gathering system did you eliminate from your appraisal?

A. As I recall, our correction sheet there, we eliminated a part of the gathering system in the Jennings field.

Q. In the Jennings field?

A. Yes.

Q. It had not included any part of any gathering system in the Carolina-Texas field?

A. I believe not—I am pretty sure about that.

[fol. 655] Q. Which did you eliminate, the West or the East Jennings?

A. No; we allocated part of it out.

Q. You are referring to your present appraisal?

A. I am referring to this Exhibit No. 9, and the correction we made at Laredo.

Q. Now, let me get it straight. The correction that you made in the Exhibit 9 affected what gathering system?

A. The Jennings.

Q. East Jennings or the West?

A. All of those Jennings.

Q. All of the Jennings?

A. Yes, sir.

Q. Now, what was the correction that you made in the appraisal that you filed before the Railroad Commission?

A. I don't know if I understand you full here, Mr. Lange. Near the close of the Laredo hearing we made an exhibit deducting part of the Jennings lines from the appraisal, because of allocation; and in this Exhibit 9 that we are now presenting we have included that in the Exhibit—that is, we no longer have that face sheet showing the deductions.

Q. Then that covers the same properties that you corrected in the appraisal—the extra sheet that you filed in the appraisal before the Railroad Commission?

A. This Exhibit No. 9 is practically exactly the exhibit we filed before the Railroad Commission with the face sheet [fols. 656-688] which corrected the Jennings gathering system.

Mr. Coates: That is, you made your correction in the Exhibit rather than in a correction sheet this time?

A. Yes, sir; that is correct.

Q. And does that affect the same property items?

A. Yes, sir.

Q. Now, where is that transmission line on which Mr. Womack charges the proportionate rental to the Laredo area, where is that situated with reference to that map?

A. From the Jim Hogg Field to the Jennings Junction.

Q. That would be in a northeasterly direction from the Jennings Junction towards Jim Hogg?

A. That is right, yes, sir.

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[fol. 689] Testimony of H. L. Dickerson

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Cross-examination.

Questions by Mr. Bobbitt:

Q. Now, these services you refer to that the Electric Bond and Share Company furnishes gas lines and that you have testified about—where is the office of the Electric Bond and Share Company?

A. Two Rector Street, New York.

Q. Where?

A. Two Rector Street, New York.

Q. Two Rector Street, New York.

A. Yes, sir.

Q. Who is President of Electric Bond and Share Company?

A. Mr. C. E. Groesbeck.

[fol. 690] Q. And how many Vice-Presidents have you in the concern?

A. I think there are five.

Q. Five. And how many other general officers of Electric Bond and Share Company?

A. By "general officers" what do you mean—corporate officers?

Q. Yes, sir.

A. A Treasurer and a Secretary.

Q. You have testified as to the value of this special service rendered to this concern and the cost thereof, and by deduction there is fifteen per cent profit. Will you tell us what is the salary of the President of Electric Bond and Share Company?

Mr. Coates: We object to it. I don't see any relevancy for the over-all cost. If the service is worth its value——

The Court: Mr. Coates, I tried to keep you out of that. You insisted, and they have a right to go into the elements of it.

Mr. Coates: I think it is perfectly admissible to go into the character of the services and the valuable character of the service and show that the cost of rendering it is in keeping with the amount paid for it, but if the over-all cost is not out of line I fail to see the relevancy and materiality.

The Court: The objection is overruled.

Mr. Coates: Note the exception.

[fol. 691] What salary does the President of Electric Bond and Share Company receive?

A. I don't know. I saw by the papers a week or so ago some figure——

Q. Well, we are not trying the case by what you see in the papers.

A. I don't know.

Q. You are employed by the Electric Bond and Share Company?

A. Yes, by the President. He knows what I get, but I don't know what he gets.

Q. You work out of the New York office?

A. Yes, sir.

Q. You don't know what the President of Electric Bond and Share Company gets in salary?

A. I do not.

Q. Have you any idea?

A. I have not.

Q. What salary does the First Vice-President of Electric Bond and Share Company receive?

A. I don't know.

Q. Or what any of the other Vice-Presidents receive?

A. I don't know.

Q. You don't have any idea what the payroll and salaries are of the concern that is furnishing this service?

A. I know what the payroll is by departments, but not by individuals.

Q. Well, what is the payroll of the Executive Department of Electric Bond and Share Company?

[fol. 692] A. I haven't that figure here, but I can secure it.

Q. Will you do that?

A. Yes, sir.

Q. You can find that out without any trouble?

A. Yes; I have it in my papers.

Q. And the salaries of each of the Vice-Presidents?

A. No, sir, I can't. There is only one person, outside of the persons who receive that figure, that knows. That is the Controller of the company.

Q. What does the Controller get?

A. I don't know.

Q. Nothing secret about the salaries paid its officers, is there, Mr. Dickerson?

A. I think not. As I said, I saw it in the papers the other day.

Q. Well, what were the figures?

A. They were figures for 1932 and 1933. My recollection is that Mr. Groesbeck got seventy-seven thousand dollars.

Q. Who is that?

A. Mr. Groesbeck. He got that at that time. I don't know what he gets now.

Q. What do these others get?

A. From a hundred thousand down to sixty-five thousand a year.

Q. From a hundred thousand to sixty-five thousand salary a year?

A. Yes, sir. That was shown in the papers. There were [fol. 693] comparatively few of them.

The Court: Mr. Coates, do you object to what he saw in the newspapers?

Mr. Coates: Yes, sir, and I move that it be stricken out as hearsay.

The Court: I was uncertain whether you objected to all of it.

Mr. Bobbitt: Well, he said he can get it.

Mr. Coates: No, he didn't say he can get it.

The Court: Gentlemen of the Jury, you will not consider for any purpose what the witness said he saw in the newspapers, about salaries or anything else.

Q. But you will endeavor to acquire the information from the proper records of the company?

A. Yes, sir.

Q. And it is the concern furnishing this service you testified about?

A. It is.

Q. Giving service in the utmost detail you have testified about?

A. It is.

Q. How many sponsors—I believe you called them sponsors—how many sponsors operate down at Laredo in helping the local officers run that concern?

A. There is an operating sponsor, an engineering sponsor, a rate sponsor, an accounting sponsor, and a representative of the Commercial Department.

Q. He is a sponsor, isn't he?

[fol. 694] A. Well, he is not so designated. There is no individual man assigned to these properties. In the other companies there is a man assigned to the United Gas Public Service Company properties.

Q. Now, give us the other sponsors.

A. A representative of the Tax Department, legal representatives——

Q. Are they sponsors?

A. They are not so designated, because they are not assigned to one property or one group of properties; all follow

the routine operations of these properties accounting to Laredo and all make periodic visits to the properties, including Laredo.

Q. Now, can you without too much detail tell us how many sponsors operate down there—what is the total number of sponsors and representatives that furnish the service you testified about—the total number?

A. The organization consists of some seven hundred people.

Q. You don't send seven hundred people down there, do you?

A. The number of people who make periodic visits to the properties, representing different departments, is probably ten or twelve.

Q. Mr. Dickerson, what do you pay these sponsors?

A. I have no individual payroll figures.

Q. Well, can you tell us approximately?

A. No. I can by departments, but not by individuals.

Q. They draw good salaries?

[fol. 695] A. I can tell what the engineering total payroll is and what the commercial department is.

Q. I am talking about the individuals that furnish this service.

A. I have no information as to what any individual gets in the way of salary.

Q. Now, you have told us a good deal of detail about what they do?

A. Yes, sir.

Q. And it is in the record, of course, and there isn't much left for the local officers to do after those sponsors get through?

A. Considerable.

Q. But every policy and every action down there that amounts to anything in connection with the management and operation of these properties to furnish gas to the people who use it is directed and sponsored by Electric Bond and Share Company?

A. It is not directed by Electric Bond and Share Company.

Q. Well, what do you call the service you have just testified about?

A. The service is for facilitating the operations. Specifically, the accounting processes of the Texas Border Gas

Company today as compared to three years ago are quite different.

Q. They don't direct it; they just facilitate it?

A. They consult, advise and assist the operating officials.

[fol. 696] Q. Yes, sir. Now, Mr. Dickerson, when did this Electric Bond and Share Company service begin with these particular properties at Laredo?

A. January first, 1931.

Q. January first, 1931. Have they increased the service since that time, or were you giving the same service at that time that you are now rendering?

A. Substantially the same.

Q. Substantially the same. Now, Mr. Dickerson, what is the extent of the stock ownership held by Electric Bond and Share Company in the United Gas Public Service Company?

A. Seven and nineteen hundredths. Wait a minute. Will you read that question to me.

(Thereupon the Reporter read the last preceding question.)

A. Nothing.

Q. They own no stock in it?

A. No, sir.

Q. Do they hold stock of the United Gas system?

A. No, sir.

Q. Do they hold stock in any of the affiliate groups of the United Gas system?

A. They hold seven and nineteen hundredths per cent of the voting stock of the United Gas corporation, which in turn owns one hundred per cent of the voting stock of United Gas Public Service Company.

Mr. Bobbitt: I didn't get that straight.

[fol. 697] Mr. Coates: Read the answer.

(Thereupon the Reporter read the last preceding answer.)

Q. What do you mean by "voting stock"?

A. The common capital stock, which is entitled to vote—not preferred stock.

Q. Mr. Dickerson, let me ask you this question: Will you start with Electric Bond and Share Company, the concern with which you are connected and which company manages these properties and performs the services you have testi-

fied about, please, sir, and give us the connection between Electric Bond and Share Company down to the subsidiaries of United Gas Public Service Company at Laredo furnishing this service and owning these properties?

Mr. Coates: We believe the record here shows the connection of the voting stock here which constitutes control. Now, what is the relevancy of the holding of stock by Electric Bond and Share Company in any of the companies?

The Court: He didn't ask for all the companies, but for those serving Laredo only.

Mr. Coates: All right.

Q. Now, you are familiar with those. It will take only a short time, I believe. Just start there and come down to Laredo.

A. I was looking through my papers.

Q. All right. Take all the time necessary.

[fol. 698] A. Electric Bond and Share Company owns forty-seven per cent of the voting stock of the Electric Power & Light Corporation; Electric Power & Light Corporation owns sixty-one per cent of the voting stock of United Gas Corporation; United Gas Corporation owns one hundred per cent of the voting stock of United Gas Public Service Company.

Mr. Coates: That is in addition to that holding—or is it in addition to the holding of seven per cent plus of the stock of United Gas Corporation by Electric Bond and Share Company?

A. I don't know; I would have to check that up. My impression is that seven per cent plus owned by Electric Bond and Share Company is referred to——

Q. Well, now, what has become of the other concerns, South Texas Gas Company and Texas Border Gas Company,—what has become of those companies?

A. They are dissolved.

Q. They are dissolved. Where is the property, the leases and so forth, contracts, owned by them—do you know when they were dissolved?

A. In September or October, 1932. Let me correct that.

Q. Yes, sir.

A. The properties were taken over in September or October, 1932. The act of dissolution occurred after that.

The Court: Let's take a little recess, Gentlemen.

(Recess from 10:35 to 10:50 a. m.)

[fol. 699] (After Recess)

Q. Now, Mr. Dickerson, without taking up a lot of time and going into too much detail, I want to get a few things straightened out with reference to stock ownership. You testified Electric Bond and Share Company owned forty-seven per cent of the stock in Electric Power & Light Corporation?

A. Yes, sir.

Q. Who owns the other stock?

A. Some sixty-five thousand of the dear public.

Q. Some sixty-five thousand of the dear public?

A. Yes, sir.

Q. Are any of them—any of the dear public in Austin or Laredo that you know of?

A. I haven't a list of the stockholders, and I could not remember sixty-five thousand names and addresses, so I don't know.

Q. Does any other corporation own any stock in Electric Power & Light Corporation?

A. Those sixty-five thousand stockholders may include companies—insurance companies, individuals, and other corporations.

Q. The forty-seven per cent owned by Electric Bond and Share Company lacks four per cent of being a majority of the stock. Does Electric Bond and Share Company hold voting powers of some of these sixty-five thousand members of the dear public you testified about?

[fol. 700] A. I think not.

Q. Are you sure they don't?

A. The individual stockholder receives a proxy to vote on all matters of corporate importance in annual meetings.

Q. Electric Bond and Share Company holds proxies of these sixty-five thousand of the dear public you testified about?

A. Not necessarily.

Q. Well, they do in fact?

A. Not in fact. Proxies are submitted by those stockholders who feel so inclined.

Q. Electric Bond and Share Company's officers hold and vote them?

A. The nominees of Electric Bond and Share Company named in any meetings hold them and vote them.

Q. Mr. Dickerson, does Electric Bond and Share Com-

pany control the policies of the Electric Power & Light Corporation?

A. I think that is a fact.

The Court: Gentlemen, I hate to object when counsel on the other side don't, but I fail to see the materiality of the stock of Electric Power & Light when we are trying this case?

Mr. Bobbitt: I was just trying to hook it up.

Q. Then the sixty-one per cent of the United Gas Corporation is held by Electric Power & Light Corporation?

A. That is right.

[fol. 701] Q. Does Electric Bond and Share Company have a permit to do business in Texas?

A. I don't know, sir.

Q. You don't know?

A. No, sir.

Q. It is a foreign Corporation, isn't it?

A. Yes.

Mr. Coates: He said he didn't know.

The Court: The question now is whether it is a foreign corporation.

Q. Where is it incorporated?

A. Delaware.

Q. It is a Delaware corporation, and you don't know whether it has a permit to do business in Texas or not?

A. I do not.

Q. Mr. Dickerson, you testified as to the financial matters handled by Electric Bond and Share Company for United Gas Public Service Company and affiliated companies. What interest do they charge United Gas Public Service Company and their affiliates for the financial transactions they handle for them?

The Court: You mean what rate of interest per annum?

Q. What rate of interest do they charge?

A. What form of financial transactions do you refer to?

Q. Well, you said they financed them and furnished capital for them?

[fol. 702] A. I think not.

Q. I thought you said they loaned money?

A. They do.

Q. What rate of interest do they charge?

A. Six per cent.
Q. What commission do you charge?
A. None.
Q. None?
A. None.
Q. Are you certain of that?
A. Absolutely.
Q. Now, you testified this morning, Mr. Dickerson, with respect to that six cent gathering contract in the Carolina-Tex. field, that you thought it was a good contract at that time and it is a good contract now and, if I understood you, that the gas reserves or the gas supply was being depleted as one of the reasons you gave for the six cent contract; that is correct, isn't it?
A. No, sir; there is no six cent contract.

Mr. Coates: Mr. Bobbitt, it is a one cent gathering contract.
Mr. Bobbitt: But added to the five cents it makes six cents.
Mr. Coates: For gas gathering.

Q. Now, that was in 1929?
A. Yes, sir.
Q. Mr. Dickerson, didn't you as an officer and employe of [fol. 703] the company and the other officers of the company know at that time that you had in ownership and under lease contracts for gas in an almost unlimited supply?
A. We had contracts, but not gas; that was our difficulty.
Q. What do you mean?
A. We had contracts for all production under certain leases and under certain contracts, but didn't have the gas.
Q. Didn't you own leases on land in that vicinity there?
A. We did.
Q. Which were producing gas and had a large potential supply of gas?
A. A potential supply of gas can't get under the consumer's cook stove. It has to be brought to the surface and put into the lines.
Q. How is that?
A. It has to be brought to the surface and put into the lines by the expenditure of very substantial sums of money.
Q. I understand that.
A. Which the company did not have.
Q. I am talking about the reserve supply of gas.
A. A reserve can't be used until developed.

Q. I say, the company owned that by lease or otherwise and had control of the gas reserve?

A. That is correct.

Q. Isn't it true that under date of March 6, 1928, your company made this statement with respect to reserves in [fol. 704] these fields: "The gas reserves of the Jennings Field within the area covered by the leases and contracts held by the company are conservatively placed by Ralph E. Davis, Engineer, at forty-five billion cubic feet, and the gas reserves in the Carolina-Texas and Cole fields at four billion cubic feet, or a total reserve of forty-nine billion cubic feet, a quantity sufficient to constitute an adequate supply for the present markets over a period of twenty-five years." Did your company on March 6th, 1928, have a supply of gas in control represented by that statement?

A. I don't know.

Q. You don't know. Well, will you look at this paper here, Mr. Dickerson, and refresh your memory? (Hands paper to witness.)

Mr. Coates: Where is that?

Mr. Bobbitt: I asked Mr. Dickerson to refresh his memory with this. Do you want to look at this?

Mr. Coates: Yes, sir.

Mr. Bobbitt: Here is the statement I read.

Q. Have you looked over this circular?

A. Yes, sir.

Q. Was that circular issued by the South Texas Gas Company?

A. Presumably so. I was not with the Gas Company or any of the affiliated companies when it was issued.

Q. Were you with the companies that controlled or operated the affiliated companies?

[fol. 705] A. I was not at the time the circular was issued.

Q. When did you come with the company?

A. I think it was January, 1929.

Q. Mr. Dickerson, who would know accurately whether or not these reports as to the gas reserves were true?

A. Mr. Ralph E. Davis, presumably. He made the statement.

Q. I am talking about the officers of the company. Do you know?

A. I don't know who the officers were. I presume the officers would know.

Q. Now, you have looked over this instrument. It was issued in connection with the refinancing of the company's properties along the lines of the service you have testified about this morning, was it not?

A. No, sir.

Q. What was the purpose of the issuance of this circular?

A. I have no idea.

Mr. Coates: We object to it.

The Court: He was not with any of the companies at that time.

Mr. Coates: We further object because the authenticity of the statement has not been proved up as a proper predicate for questioning or impeaching the witness.

The Court: I think it would be proper questioning if he knows anything about it.

Q. Now, what officer of the company would know?

[fol. 706] The Court: He said he didn't know who the officers of the company were at that time.

Q. Well, have you found out since who were the officers at that time?

A. No, I have not.

Q. Did the Electric Bond and Share Company have anything to do with that circular at that time?

A. No, sir, and no financial interest in it—didn't know the company existed, so far as I am aware.

Q. How is that?

A. They didn't know even that the company existed, so far as I am aware.

Q. Who has paid the interest on the bonds referred to in this circular?

A. The company or its successor company, if earned, and United Gas has advanced the interest if not earned.

Q. How do you know those facts?

A. I have known them since the date of my connection with the consolidated properties, namely, June, 1930.

Q. You inq ired into it and became familiar with it?

A. I pass on most of the payments and earnings of the companies.

Q. Then the bond issue was actually made, as I understand and as you testify here,—the bond issue you testify about was actually made and issued?

A. What was the statement?

(Counsel hands paper to witness.)

A. Yes, sir.

[fol. 707] Mr. Bobbitt: If the Court please, this witness does not seem to know anything about the officers of the company who issued this. We would like to have time to get the Railroad Commission's reports and find out who the officers of the company were.

The Court: You can do that during the noon hour.

Mr. Bobbitt: Well, I want to reserve the right to do that.

The Court: All right; you can do that.

[fol. 708] Q. On the back of this circular, Mr. Dickerson, is a map or sketch of the Laredo gas section, is there not?

A. Yes, sir.

Q. Including the city of Laredo and the various fields around Laredo?

A. Yes, sir.

Q. From which the Company is taking?

A. (No answer made.)

The Court: As a matter of curiosity I would like to see that. May I look at that?

Mr. Bobbitt: Yes, sir.

The Court: All right, gentlemen; go ahead, I didn't mean to stop you.

Q. Mr. Dickerson, are you familiar with the contract under which natural gas is delivered to the Rio Grande Gas Company at the Jim Hogg Junction, as shown on the map—that is, the junction is shown on the map and the location of the delivery points?

Mr. Coates: We again object, that the authenticity of this instrument about which he is examining him has not been established.

Mr. Bobbitt: I am asking him about this map—the map back here.

A. Oh, well, it is on here, too.

Mr. Bobbitt: Well, I am talking about the one up there.

[fol. 709] A. In reply to your question, Mr. Bobbitt, I don't think I answered it, and I would like to have the question repeated.

Mr. Coates: Well you read the question?

A. The question before you showed the Judge this map.

(Thereupon the Reporter read the question referred to, as follows: "Q. From which the Company is taking gas?")

Q. I just asked, in passing, if that was supposed to be a representation of the fields there.

A. As of that date, presumably the Company was taking gas from the fields shown. The Cole field apparently was supplying gas only to Hebbronville. It was not connected to the system supplying Laredo.

Mr. Bobbitt: Now, will you read my question, read that question to him, please?

(Thereupon the Reporter read the question, as follows: "Q. Mr. Dickerson, are you familiar with the contract under which natural gas is delivered to the Reo Grande Gas Company at the Jim Hogg Junction, as shown on the map—that is, the junction is shown on the map and the location of the delivery points?")

Mr. Coates: Objected to because it is not shown that conditions are like and comparable, and no proper predicate laid for the question, and it purports to show a comparison of rates for a border delivery of high load factor gas for transportation to Monterrey with prices for gas for delivery [fol. 710] at a city gate such as Laredo.

The Court: I don't believe you understood the question, Mr. Coates.

Mr. Bobbitt: No, sir.

Mr. Coates: Possibly not.

Mr. Bobbitt: I don't see any use in taking up a lot of time. I just asked him if he is familiar——

The Court: Go ahead; I will overrule the objection.

Mr. Coates: Note our exception.

A. I know there is a contract. I am not now familiar with the terms of it; it has been several years since I have seen it.

Q. What is the price charged there for gas, at the junction?

Mr. Coates: To which we object because no proper predicate is laid by showing that conditions are like and comparable.

The Court: I will overrule the objection and let him answer.

Mr. Coates: Note our exception.

Q. What is the price, Mr. Dickerson?
A. I don't recall the price.
Q. You don't recall the price?
A. No, sir.
[fols. 711-712] Q. Do you know what officer of the Company would know?
A. I could ascertain——
Q. How is that?
A. I could ascertain the price.
Q. Will you do that, and let us know?
A. I will be very glad to.
Q. You are familiar with the price charged for gas at Laredo for industrial purposes, are you not?
A. Generally, yes, sir.
Q. It is twenty cents, isn't it, generally?
A. I——
Q. Well, you say you are familiar with it, generally. What is it?
A. I would say around twenty cents.

* * * * * * *

[fol. 713] Recross-examination.

Questions by Mr. Bobbitt:

Q. In connection with this service and work for them, what salary do you receive from——

Mr. Coates: To which we object, because it has no material bearing on any issue in this case, nor on the value—no material and determinative bearing on the cost of the service.

The Court: Now, wait a minute, Gentlemen. Be a little [fol. 714] careful here. I understand this man is employed by the Electric Bond and Share Company.

Mr. Bobbitt: Yes, sir, and the sponsor——

The Court: And he is the sponsor of this particular work down here.

Mr. Bobbitt: Yes, sir.

The Court: He can answer the question, I will overrule the objection.

Mr. Coates: Note our exception.

A. Twenty thousand dollars a year at the present time.
Q. Twenty thousand dollars a year?

A. Yes, sir.

Q. What was it six or eight months ago, or twelve months ago?

A. Twenty thousand dollars.

Q. What was it two years ago? That is within the period of time under investigation here.

Mr. Coates: We object to that as being too remote.

Q. The first of January, 1931?

Mr. Coates: Objected to as too remote.

A. Twenty-two thousand dollars.

Q. Twenty-two thousand dollars a year. That is salary, isn't it?

A. That is salary, and that is not billed to United Gas Public Service Company.

Q. Well, part of it billed there?

[fols. 715-716] A. None of it is billed there.

Q. In addition to that, why, you get some other remuneration, don't you, Mr. Dickerson?

A. Yes, sir.

Q. Don't you have an interest in the managing of the Company—Electric Bond and Share?

A. If I bought and paid for it I have the same as I have an interest in a home or an interest in a farm.

Q. Yes, sir. Well, didn't you get a bonus for the work performed in this sponsoring business, in the organization and promotion of these companies?

A. No, sir.

Q. Of course, all your expenses when you are out on a job, performing this service—that is all paid for?

A. The same as the City of Laredo pays yours up here, yes, sir.

Q. I hope yours is higher than mine.

* * * * * * *

[fol. 717] Recross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Dickerson, under the mortgage indenture that is now in force in connection with the financing of the transmission properties serving Laredo, doesn't the mortgage indenture provide that a sale of the properties, or part of

the properties may be made, if certain arrangements as to sinking fund provisions are made with the trustee for the loan?

[fol. 718] A. That is my recollection of the mortgage conditions, yes, sir.

* * * * * * *

A. D. GREENE, resumed the witness-stand, and testified as follows:

Recross-examination.

Questions by Mr. Lange:

Q. Mr. Greene, how long have you been with the Company—the Gas Company serving Laredo?

A. Since about the first of October, 1930.

Q. 1930? At the present time the United Gas Public Service Company is the only utility serving natural gas in Laredo?

A. As far as I know it is, yes, sir.

Q. And last year it was the only one, isn't that correct?

A. Well, I think so; I don't know.

[fol. 719] Q. Going as far back as the time that you began your connection with the Company there has only been the one utility serving natural gas to rate payers in Laredo?

A. That is all I know of.

Mr. Coates: Now, you are referring to the Texas Border Gas Company?

Mr. Lange: And its predecessor in title.

A. I know of only one.

Q. You don't know whether the same company which served prior to that time was the only company serving—furnishing natural gas in Laredo?

A. No, I do not.

Q. But at the present time it is the only one?

A. I don't know; I think it is.

Q. Well, you were down in the field and made this appraisal of the properties in Laredo, as you stated, Mr. Greene?

A. Yes, sir, of our properties.

Mr. Lange: Will Mr. Coates stipulate that?

Mr. Coates: I will stipulate that the only gas company rendering gas service—That is a fact, isn't it?

Mr. Lange: Yes, sir.

Mr. Coates: All right; if it is a fact I will stipulate it.

Mr. Lange: I am positive of it.

[fol. 720] Mr. Coates: All right; that is, United Gas Public Service Company and its predecessor companies.

Mr. Lange: And as far back as 1928, when your predecessors started.

Mr. Coates: Electric Bond and Share started in 1930. I will stipulate that far. I started in 1930.

Mr. Lange: I mean the companies that began this appeal before the Railroad Commission, began their corporate existence in 1928.

Mr. Coates: Yes.

Mr. Lange: And from that period on down this utility is the only one serving natural gas to the rate payers in the City of Laredo.

Mr. Coates: Well, I will stipulate back as far as I had any connection with the company, and that is 1930; and that was prior to the time this controversy began. And I will stipulate that from 1930 down to date this company and its predecessor companies have been the only companies serving gas to and within the city of Laredo.

Mr. Lange: That is all right.

The Court: I will call your attention to the fact, gentlemen, that the second witness you had on the stand—whatever his name is—gave the history of this thing from start to finish.

Mr. Lange: Except this one phase, if the Court please, [fol. 721] he didn't state that it was the only one serving it. I just wanted the record to show that.

The Court: He did make the statement that they were the only ones serving Laredo.

Mr. Lange: Yes, sir.

Q. Now, referring to the stretch of the Pescadito-Jennings transmission line about which you testified yesterday, Mr. Greene——

Mr. Bobbitt: Mr. Lange, speak out; we can't hear you, and I am sure the jury can't all hear you.

Q. The Pescadito-Jennings transmission line, concerning which you testified yesterday, you stated that a portion of that line was reconditioned last year.

A. Yes, sir.

Q. And you also stated that you and Mr. McGary had made a check of that line prior to the Railroad Commission hearing, with reference to determining its per cent condition.

A. Yes, sir.

Q. By mile posts, is that correct?

A. We made the inspection at each mile post.

Q. By mile posts?

A. Yes, sir.

Q. Do you know at which portion of the line this reconditioning was made last year?

A. Yes, sir. I do.

[fol. 722] Q. Could you tell us from which mile posts?

A. I can tell you approximately—it is approximately from Mile Post 10; that would be approximately ten miles from Jennings Junction, beginning at that point and extending four miles northwest.

Q. Four miles northwest?

A. And beginning again at—approximately at Mile Post 18 and extending about four miles to Mile Post 22.

Q. Now, do you know how many lineal feet of pipe were taken out of that line and not put back in that reconditioning work?

A. Yes, sir.

Q. Could you give us that?

A. When this reconditioning work began there was 11,000 feet of pipe shipped in to the job, and used in that reconditioning work, and naturally when the job was finished there would be 11,000 feet left.

Q. Was that new or itself reconditioned pipe?

A. Part of it was reconditioned; I am not certain whether all of it was reconditioned or part of it was new. I think that the major portion of it was reconditioned pipe.

Q. That entire line between Pescadito and Jennings is a six-inch transmission line?

A. Yes, sir.

Q. What is the distance——

[fols. 723-744] A. Well, not the entire line.

Q. Yes, sir.

A. There is some eight-inch and a little of the seven-inch.

Q. That is at the extreme south end?

A. Yes, sir.

Q. Now, what is the distance of the line—of the transmission line extending from Jennings Junction to Roma?

A. In round numbers, that is 47 miles. I can't tell you the exact number of miles.

Q. That is twelve-inch pipe?

A. Yes, sir.

Q. The entire distance?

A. Yes, sir.

* * * * * * *

[fol. 745] Testimony of P. McDonald Biddison

Cross-examination.

Questions by Mr. Bobbitt:

Q. Do you know the population of Laredo?

A. Only approximately.

Q. What is it, approximately?

A. Something like thirty thousand, is my recollection.

Q. Isn't it about thirty-seven or thirty-eight thousand?

A. It may be.

Q. Do you know the increase from decade to decade—that is, each ten years—of the population?

A. No, sir.

Q. You don't know about that?

A. No, sir; I don't know what that is.

Q. You spoke of the gas reserves of a property situated [fol. 746] in an area where the gas reserves are limited as they are in this area. Do you know anything about the gas reserves down there?

A. I didn't state they were limited. I said the pools were of small area comparatively and comparatively short lives.

Q. Do you know that of your own investigation or survey?

A. That is a matter of general knowledge. I have made no special investigation of the reserves in that area.

Q. By this free flow of capital, you mean folks furnishing capital or money to build businesses like these gas pipe lines?

A. Yes.

Q. That is that you mean?

A. Yes.

Q. And people don't invest money, as a rule, along the

lines that you have suggested unless they understand, or think they understand, that they would probably get a return on it?

A. That is correct.

Q. And do you know how many main gas transmission lines have been built and constructed out of the Laredo gas area to San Antonio?

A. No; I don't offhand.

Q. Well, you don't know. Do you know how many gas transmission lines have been constructed from that area to the City of Houston?

Mr. Coates: What do you mean by "Laredo area"?

[fol. 747] Mr. Bobbitt: I mean what I say.

Mr. Coates: "Laredo area" has come through use here to have a fairly well defined meaning as being the area within which these lines which serve Laredo are located.

The Court: Yes, sir.

Mr. Bobbitt: Well, say, the Carolina-Texas, the Bruni, Jennings, Cole——

Mr. Coates: I don't like to break in here, but I don't think that the record reflects that the Cole and Bruni fields have been included in the Laredo area, as the term has been used in this case.

Mr. Bobbitt: It is on the map there. It shows the Bruni field. We have been talking about it here for a week. We are talking about the field of gas transmission lines in the vicinity of Laredo.

Mr. Coates: We object to the question because it is not sufficiently definite in stating the field to which the question relates.

The Court: I believe you had better be a little more definite.

Q. Do you know, Mr. Biddison, the gas fields located in the Laredo area?

A. Why, I don't know that I know them all, no.

Q. Do you know some of them?

A. Yes.

Q. Name some of them.

A. There are a bunch shown on this map here—the Jen-

[fol. 748] nings, Carolina-Tex field, Bruni field, Jim Hogg field, Cole field, Escobas——

Q. That is where that three-cent gas is, isn't it?

Mr. Coates: We object to counsel's remark.

The Court: Yes, sir; gentlemen, you will not consider that remark as testimony.

A. —the old Schott field.

Mr. Bobbitt: I beg pardon for the remark.

Q. Those fields named, are those generally in the Laredo area?

A. Yes, sir.

Q. Do you know how many main gas transmission lines have been built out of those fields to Houston, Texas, Monterrey, Mexico, San Antonio, Texas, and Brownsville and the Lower Valley?

A. I don't know that I know them all. I know two major pipe line systems that run into Houston, which have connections out into that general area. I know there is a line from that general area down to Monterrey. I know that is a line from that general area that connects into the San Antonio area.

Q. Do you know that the transmission line from that area to Houston cost twenty million dollars?

A. I don't know what it cost.

Q. Do you know what the two main transmission lines from that area to San Antonio cost?

A. I do not.

Q. And on up to New Braunfels and Austin?

[fol. 749] A. I do not.

Q. Do you know what the transmission lines in that area cost down to Roma and on to Monterrey, Mexico?

A. No, sir.

Q. Do you know what the transmission lines from that area to the cities in the Valley and to Brownsville cost?

A. I do not.

Q. On this free flow of capital idea that has been developed here, that capital would not have flown freely if the investors did not feel, based upon investigation or knowledge, or apparent knowledge of conditions, that they would get a return on the investment that had made in the construction of those pipe lines?

A. I don't understand the question.

Q. I will withdraw that question. Those numerous transmission lines that we have just enumerated there would not, as a practical matter from an investor's standpoint, have been constructed unless the investors knew or thought they

knew there was a permanent supply of gas in that area, would they?

A. Without having in view that there was a permanent supply of gas in that area, I hardly think any of them would have been financed if there had not been an expectancy that there would be a supply there in that area or other areas available to the pipe line that would make the venture profitable.

[fol. 750] Q. And the construction of those numerous gas transmission lines entailed quite a free flow of capital to construct and build them, did it not?

A. Yes, sir.

Q. And these accrual rates for depreciation of five per cent on distribution, six per cent on transmission, and ten per cent on gathering system, that is your opinion of what the rate ought to be, isn't it?

A. Yes, sir.

Q. And in addition to that amount, they are entitled to ten per cent net return?

A. That is my opinion, yes, sir.

Q. So in the case of the distribution system it is fifteen per cent, in the transmission system it is sixteen per cent; and in the case of the gathering system twenty per cent?

A. Not net return, no. Those are the percentages which I think should be available to the owners for the two purposes of depreciation accrual and return.

Q. Yes, sir. That is what I understood was your testimony. I wanted to see that it was clear. Mr. Biddison, the rate case expenses—what are commonly known as rate case expenses—is an item that goes into Operating Expenses, and charged by the utilities, isn't it?

A. It would normally be so charged as an operating expense item.

Q. Isn't it normally so charged, or attempted to be charged?

A. Yes; I think so.

[fol. 751] Q. And it is your opinion that the rate case expenses, such as in this case here, is a proper charge against Operating Expenses, and a proper charge back to the rate payers?

A. I think it is a proper item to be set up as an operating expense, but I don't know how anybody is going to charge it against any rate payers.

Q. If it goes into Operating Expenses, and rates are based on that and collected, don't they pay it?

Mr. Coates: We object to that as argumentative, and based on an erroneous legal conclusion.

The Court: The objection is sustained that it is argumentative.

Q. Well, it goes into Operating Expenses?

A. Yes, sir; I think so, properly.

Q. You are an expert, and we have listened with much interest to your experience as you have detailed it here to us. You have had a large experience in such matters, and that is a proper and usual and customary charge?

A. Yes; I am agreeing with you on that.

Q. Yes, sir; now, in that connection, the usual method is to amortize it or split it over a period of years?

A. That would depend on the circumstances in connection with any particular case.

Q. And those charges, in your opinion, as an expert, ought to be reasonable, ought they not?

A. Why, yes, I think all charges should be reasonable.

[fol. 752] Q. And your services, and expert opinion and advice in connection with this rate case is one of the items that go into that charge, in this particular case?

A. I believe so, yes.

Q. And Mr. Biddison, what per diem or salary or fee do you charge for your attendance here in Court in this proceeding for your professional services?

Mr. Coates: We object to that, because it is immaterial for any issue in this case. It does not pertain to any testimony that has been given.

The Court: Go ahead.

Mr. Coates: Note our exception.

A. Well, I have not had any understanding with this organization with regard to this particular case.

Q. Have you any idea what you are going to bill them—the United Gas Public Service Company—for your professional services in attending Court here from day to day?

A. Yes, sir.

Q. What is it?

A. I am going to bill them at one hundred dollars a day.

Q. For each day?

A. Yes, sir.

Q. In addition to that, expenses?
A. Yes, sir.
Q. And you have been here since the trial started?
A. Except two days.

Mr. Bobbitt: I believe that is all.

* * * * * * * *

[fol. 753] C. F. PETET, recalled by the defendant, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. You are the same C. F. Petet that has previously testified in this case?
A. Yes, sir.
Q. And your position is?
A. I am Secretary of the Railroad Commission of Texas.
Q. Are you the custodian of the records of the Railroad Commission, including its records in cases heard by the Gas Utilities Division?
A. Yes, sir.
[fol. 754] Q. You have been subpoenaed to bring here, I believe, Mr. Petet, the record, consisting of the transcript of testimony and the exhibits of the parties in Gas Utilities Dockets Numbers 49 and 63, heard by the Railroad Commission of Texas?
A. Yes, sir.
Q. And have you brought that record, consisting of both the testimony and the exhibits, here into court?
A. Yes, sir.
Q. And is the record here in front of you?
A. Yes, sir.

Mr. Coates: The defendant now offers in evidence as Defendant's Exhibit Number 13 the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Dockets Numbers 49 and 63, consisting of:

Book No. 1 of the transcribed testimony, being a part of the testimony heard in October, 1932;

Book No. 2 of the transcribed testimony, being the remaining portion of the testimony in this hearing heard in October, 1932;

(Said Books 1 and 2 are bound together and comprise Volume "A" of this Statement of Facts.)

Book No. 1 of the Transcript of Testimony, being a portion of the testimony before the Railroad Commission heard in November, 1932;

Book No. 2 of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932.

(Said Books 1 and 2 are bound together and comprise Volume "B" of this Statement of Facts.)

[fol. 755] Company's Exhibits, as follows:

Exhibit No. 1, (Set out in Volume "C", at page 1762).
Exhibit No. 2, (Set out in Volume "C", at page 2059).
Exhibit No. 3, (Set out in Volume "C", at page 2071).
Exhibit No. 4, (Set out in Volume "C", at page 2081).
Exhibit No. 4-A (Set out in Volume "C", at page 2088).
Exhibit No. 5, (Set out in Volume "C", at page 2107).
Exhibit No. 5-A (Set out in Volume "C", at page 2117).
Exhibit No. 6, (Set out in Volume "C", at page 2120).
Exhibit No. 7, (Set out in Volume "C", at page 2122).
Exhibit No. 8, (Set out in Volume "C", at page 2126).
Exhibit No. 9,—Two instruments, both marked Exhibit No. 9, one being a partly handwritten and partly typewritten copy of a contract dated December 31, 1929, between the South Texas Gas Company, seller, and Compania Mexicana de Gas (Set out in Volume "C", at page 2138); and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract between the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932 (Set out in Volume "C", p. 2143).
Exhibit No. 10, (Set out in Volume "C", at page 2148).
Exhibit No. 11, (Set out in Volume "C", at page 2157).

City of Laredo Exhibits, as follows:

Exhibit "A", Appraisal, (Set out in Vol. "D", page 2165).
Exhibit "A" (2), (Set out in Vol. "D", page 2413).

Exhibit "B", (Set out in Vol. 'D", page 2419).
[fol. 756] Exhibit "C", (Set out in Volume "D", at page 2426).
Exhibit "D", (Set out in Volume "D", at page 2428).
Exhibit "E", (Set out in Volume "D", at page 2433).
Exhibit "F", (Set out in Volume "D", at page 2436).
Exhibit "G", (Set out in Volume "D", at page 2438).
Exhibit "H", (Set out in Volume "D", at page 2442).
Exhibit A—Supplement 1, (Set out in Volume "D", at page 2415).
Exhibit A—Supplement 2, (Set out in Volume "D", at page 2417).
Exhibit "I", Map, (Set out in Volume "E", at page —).
Exhibit "J", Map, (Set out in Volume "E", at page —).
Exhibit "K", Map, (Set out in Volume "E", at page —).
Exhibit "L", (Set out in Volume "D", at page 2449).

Mr. Coates: Defendant's Exhibit No. 13 is offered in support of the allegations contained in Defendant's Answer, in Subdivision "C", being the allegations with respect to defects in the Railroad Commission's order.

Mr. Bobbitt: To which we object; and the same objection goes to each and every one of them.

The Court: Which objections are overruled.

Mr. Bobbitt: To which we except.

NOTE.—The foregoing Defendant's Exhibit No. 13 has not been transcribed, but the original of such exhibit consists of and composes Volumes "A" to "E" of this record. The original of Defendant's Exhibit No. 13 has been bound and used as a part of the record by agreement of counsel and under direction of the Court.

* * * * * * *

[fol. 757] W. W. STEIN, a witness for defendant, was recalled by plaintiffs for further cross-examination, and testified as follows:

Recross-examination.

Questions by Mr. Bobbitt:

Q. You are the same Mr. W. W. Stein who testified in this case heretofore?

A. Yes, sir.

Mr. Lange: It is understood, of course, that this is still part of his testimony.

The Court: Yes, it is part of the cross-examination.

Q. You are District Manager of the United Gas Public Service Company at Laredo?

A. Yes.

Q. Have you got the information that we asked you for the other day and which you told us you could furnish?

A. I have not got it; I have not been able to get at it to give you the information in the way you wanted it.

Q. That is the number of meters, you understand, which are metering gas in the city of Laredo at seventy-five cents per thousand.

[fol. 758] A. Yes.

Q. As of December 31, 1933?

A. Yes.

Q. You are going to get that for us?

A. I will get it.

Q. And it will be furnished in the case before it closes?

The Court: It will be furnished as part of your cross-examination of the witness.

Mr. Bobbitt: Yes, sir.

Q. Mr. Stein, I will ask you to look at this list of officers and directors. I hand you what is stated to be an annual report of the South Texas Gas Company made to the Railroad Commission of Texas for the year ended December 31, 1928, and ask you to look at page five of that.

Mr. Coates: Wait a minute. We object to the report on the ground that it is entirely too remote to have any bearing.

The Court: He is not offering the report.

Mr. Bobbitt: I just want to qualify the witness on some questions I want to ask him.

Mr. Coates: The objection is withdrawn.

Q. Look at page five of the report, Mr. Stein, and refreshing your memory from that report can you tell us who the officers of the South Texas Gas Company were for the year 1928?

A. For what year, please?

Q. 1928.

A. The officers?

[fol. 759] Q. Yes, sir.

A. O. R. Seagraves, President; W. L. Moody, III, First Vice President; W. W. Stein, Second Vice President; G. F. Balme, Third Vice President; N. O. Oille, Secretary; and W. L. Moody, III, Treasurer.

Q. Those were the officers of the South Texas Gas Company for the year 1928?

A. Yes.

Q. And the W. W. Stein whose name you read as Vice President was Vice President during 1928 of the South Texas Gas Company—you are the same W. W. Stein?

A. Yes, sir.

Q. That is listed as Vice President of the Company here—that is correct, isn't it?

A. That is correct.

Q. I show you an instrument, Mr. Stein, headed "South Texas Gas Company—March 6, 1928", of which concern you are Vice President or were at that time Vice President; and I will ask you if the Company issued that statement of the date stated, March 6, 1928?

A. I was not with the South Texas Gas Company on March 1, 1928, nor on March 6, 1928.

Q. When did you go with the South Texas Gas Company?

A. About April 10, 1928.

Q. About April 10. Did you have any connection with the Company at that time?

A. With the South Texas Gas Company?

Q. Yes.

[fol. 760] A. I did not.

Q. Did you have any connection with any subsidiary of the South Texas Gas Company?

A. I did not.

Q. What were you doing and where were you located on March 6, 1928?

A. I was with the Border Gas Company on March 6, 1928.

Q. The Border Gas Company is a part of the South Texas Gas Company?

A. It had no connection with the South Texas Gas Company at that time.

Q. Do you know when the South Texas Gas Company was organized?

A. I don't remember the date.

Q. What concern where you with on March 6, 1928?

The Court: He said the Border Gas Company.

Mr. Bobbitt: I beg your pardon. I overlooked that.

Q. Do you know the date of the organization of the South Texas Gas Company?

A. I don't remember the date.

Mr. Coates: He just said he did not.

Q. Can you refresh your memory by looking at this report there?

A. I could remember the date reported in this report, yes.

Q. But you have no independent recollection or information about it. Mr. Stein, were you not one of the original officers and organizers of the South Texas Gas Company?

A. I believe not.

Q. You are not certain about it?

[fol. 761] A. I don't think I was an officer when it was originally organized.

Q. Well, during your incumbency as Vice President of the South Texas Gas Company you became familiar with and had knowledge of the instrument you now hold in your hand?

A. I had seen a copy of it after I became Vice President of the Company.

Q. And the Company sold stock and bonds after you became Vice President of the South Texas Gas Company?

A. It would be a presumption, but I believe so. I don't know what they did at that time in regard to the sale of stock and bonds.

Q. You saw that circular, and it was a part of the literature and the inducements held out by the Company, of which you were Vice President, to purchasers to purchase bonds and stock in the Company; that is correct, isn't it?

A. I saw a copy of a circular such as this one; it was handed to me by a local banker in the community.

Q. In connection with the sale of stocks and bonds?

A. I presume it was in connection with it. I had nothing to do with the sale of bonds or stock of the Company.

Q. That instrument was put out by the Company and you had knowledge of it and contact with it while you were Vice President of the concern?

Mr. Coates: Now, we don't think that is a proper source of information for the statement you are seeking to put in his mouth.

[fol. 762] Mr. Bobbitt: I am not intentionally trying to put anything in his mouth. I am trying to get him to recognize some of the Company's literature.

The Court: Gentlemen, I really think that that question ought to be asked in one section at a time.

Mr. Bobbitt: All right.

Q. You had experience with that circular with at least one banker in Laredo, didn't you?

A. That banker happened to receive it in the mail and he showed it to me when I happened to be in his office one day.

Q. And he asked about the Company of which you were Vice President?

A. No, he did not. He simply showed me something that pertained to the South Texas Gas Company, and inasmuch as it referred to Laredo he thought that I would be interested in it.

Q. You were interested in it?

A. I was very much interested in it; I read the copy.

Q. At that time you were Vice President?

A. It was after I became Vice President, I believe.

Mr. Bobbitt: Now, if the Court please, we offer this instrument in evidence.

Mr. Coates: We object to it as not being properly identified.

The Court: The objection is sustained.

Q. Do you know of any other copies of that instrument, Mr. Stein, that you had experience with as Vice President of the South Texas Gas Company?

[fol. 763] A. Experience with?

Q. Yes. You were interested in selling the bonds and stocks of the concern?

Mr. Coates: We object to that.

The Court: He said he had nothing to do with the sale of bonds and stock.

Q. Do you know of more than one bond issue?

The Court: By whom?

Q. By the South Texas Gas Company.

A. I don't know off-hand; I don't know whether there were any more or not.

Q. They made a sale of bonds of the South Texas Gas Company while you were Vice President?

A. I don't know whether they did or not.

Q. Don't you know whether they got any money as the result of their efforts to raise capital—as a result of these advertisements?

A. I don't know where they got the money. I know that they had some money to pay for the properties.

Q. You don't know whether they got it as a result of the sale of bonds described in that circular?

A. I don't know.

Q. You don't know?

A. It would be purely a presumption on my part, because I had nothing to do with that phase of the organization.

Q. Well, who had charge of that phase of it?

A. I don't know. I could give you——

Mr. Coates: He is asking for your sworn testimony as to [fol. 764] facts within your knowledge given under oath. If you know, tell him.

A. I don't know.

Q. You don't know. Well, as Vice President of the Company, do you know of anybody that does know?

A. I could not say for sure, Mr. Bobbitt.

Q. Well, can you tell us anything you know about the South Texas Gas Company? You were Vice President of it.

A. I possibly could along some other lines.

Q. Well, it might be pertinent. What other lines?

Mr. Coates: Now, we object to the question as being too broad and general.

The Court: Come here Mr. Bobbitt.

(Counsel for plaintiffs and defendant conferred with the Court, out of the hearing of the jury.)

The Court: The objection is sustained.

Mr. Bobbitt: Note the exception.

Q. Mr. Stein, I hand you what I understand is an annual report of the South Texas Gas Company made to the Railroad Commission of Texas for the year ended December 31, 1928, and ask you to read at page thirty-nine thereof in reference to the organization of the South Texas Gas Company.

Mr. Coates: We object to the question, because it is based on the instrument that has not been properly identified.

The Court: The objection is sustained.

Mr. Bobbitt: We except.

[fol. 765] Q. Mr. Stein, this report is signed by O. R. Seagraves, stated here to be the president of the South Texas Gas Company.

Mr. Coates: The same objection, and not shown to have any materiality or relevancy in view of the Court's ruling.

The Court: If he just wants to prove that the report is signed by Seagraves, I will let him do it.

Q. And it is signed by Mr. Oille, who was Treasurer of the concern. You don't know of your own knowledge whether this report was made by the Company of which you were Vice President to the Railroad Commission of Texas?

A. I never saw the report before, that I know of.

Q. You don't know anything about it?

A. No, sir.

Q. The South Texas Gas Company was organized on March 5, 1928, was it not, Mr. Stein, for the purpose of taking over and did it not in fact take over all the properties of the Border Gas Company?

Mr. Coates: We object to that question as duplicitous and double-barreled.

The Court: Read the question, Mr. Reporter.

(Thereupon the Reporter read the question, as follows: "Q. The South Texas Gas Company was organized on March 5, 1928, was it not, Mr. Stein, for the purpose of taking over and did it not in fact take over all the properties of the Border Gas Company?")

Mr. Coates: It is triple-barreled and we object. It is three questions in one.

The Court: Well, all right, break it up.

[fol. 766] Mr. Bobbitt: Well, all right.

Q. The South Texas Gas Company was organized on March 5, 1928, was it not?

A. According to the information I have seen, I believe that is the date.

Q. And the South Texas Gas Company took over all the properties of the old Border Gas Company, did it not?

A. It did later.

Q. How much later?

A. April 10th or 11th, 1928.

Q. And up until you went with the South Texas Gas Company in April, 1928, you were with the Border Gas Company?

A. That is correct.

Q. The new company took over the old company and you went with the old company to the new company; that is correct, isn't it?

A. They began to pay me a salary when they took charge of the operations in Laredo.

Q. Until they began paying you a salary the Border Gas Company paid you?

A. That is right.

Q. What office did you hold with the Border Gas Company?

A. At that time I believe I was Vice President; I am not sure.

Q. You are not sure?

A. I am not sure. I believe I was shortly before they sold the property.

Q. Now, Mr. Stein, since you were on the stand the other day have you acquired the information and refreshed your [fol. 767] memory as to the price of industrial gas sold by your concern at the points I asked you about the other day—San Antonio, New Braunfels, and Austin?

A. I did not get that information up. I did not know you wanted me to.

Q. You don't know anything about it?

A. No.

Q. Nor Houston?

A. Nor Houston.

Q. I believe you told us that you did know the price at Roma, twelve cents?

A. I don't remember mentioning Roma. Which price do you mean?

Q. Well, have you got two prices?

A. I don't know whether you mean the distribution system in Roma or the pipeline.

Q. Well, the industrial price at Roma, that goes through the Roma gate.

Mr. Coates: We renew our objection.

A. I don't know what you mean, Mr. Bobbitt.

Q. Well, you deliver gas for industrial purposes over at the Roma gate for Mexico and I wanted to show that you charge twelve cents for that gas going into Mexico for industrial purposes.

Mr. Coates: The same objection.

The Court: Did the witness testify to that the other day?

Mr. Bobbitt: I think he did. I am not certain.

[fol. 768] The Court: Ask him if he did.

Q. Did you?

A. I testified in regard to a price of twelve cents per thousand cubic feet charged for gas delivered at Roma sometime ago.

Mr. Coates: The objection goes to all that.

The Court: All right.

Q. And did you tell us the price that you- company charges for gas for industrial purposes in Nuevo Laredo, just across from the city of Laredo?

A. I did not.

Q. What is that price?

A. Our company does not sell gas in Nuevo Laredo.

Q. Do you deliver any there?

A. No, sir.

Q. Do you deliver any at the city gate?

A. What city gate?

Q. Nuevo Laredo city gate?

A. We sell gas on this side of the river.

Q. To Nuevo Laredo—it goes to Nuevo Laredo?

A. Goes there.

Q. What do you get for it where you sell and deliver it?

A. I would have to check into that price, Mr. Bobbitt. I didn't know you wanted that information.

Q. You deliver it to a meter just this side of the river for delivery into Mexico?

A. We deliver it to the gas company that is on the Mexico side on this side of the river.

[fol. 769] Q. What do they pay you for it per thousand cubic feet?

A. The price is thirty cents per thousand cubic feet for domestic gas.

The Court: By "domestic gas", what do you mean?

A. Residential gas sold at their residential rates. The

commercial and industrial gas sold by it—I would like to refer to that contract to get that correct. I have not looked at it for sometime and I don't figure the bills so I am not certain about it.

Q. Well, not being exactly certain, Mr. Stein, do you know approximately what your company gets for gas that you deliver at Nuevo Laredo?

A. I can give you approximate figures.

Q. What is it?

A. Commercial and industrial gas is sold at a price whereby we get a percentage of what the Nuevo Laredo Gas Company gets for it.

Q. What does the percentage amount to in dollars and cents in U. S. currency?

A. About eighty-five percent of the price they get for it in U. S. currency.

Q. What does it amount to coming to your company?

A. I don't know.

Q. Do you know what they get for it for industrial purposes?

A. I don't know the price right off-hand. They have a set of schedules and prices.

Q. Do you know what the soap factory pays for it in Nuevo Laredo?

[fol. 770] A. What soap factory?

Q. The Longoria Soap Factory.

A. I believe they pay—I believe I know it.

Q. Well, what is it?

A. Fourteen and a half cents per thousand cubic feet.

Q. Fourteen and a half cents per thousand cubic feet is what the Longoria Soap Factory pays for it?

A. Pays the Nuevo Laredo Gas Company.

Q. And your company gets eighty per cent—eighty-five per cent, I believe, is the figure, and all of this gas, now, that you have just been telling us about goes through the Laredo distribution system; that is correct, isn't it?

A. It goes through a part of the Laredo distribution system.

Mr. Bobbitt: That is all.

The Court: We will take a few minutes recess.

Recess.

[fol. 771] March 15, 1934

Plaintiffs' Rebuttal

The Court: All right, gentlemen.

LEON O. LEWIS, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. My name is Leon O. Lewis, Jr.
Q. Where do you reside, Mr. Lewis?
A. San Antonio.
Q. What is your occupation?
A. I am a Public Accountant.
Q. I will ask you whether you are a Certified Public Accountant.
A. Yes, sir, I am a Certified Public Accountant.
Q. Do you have a certificate in this State—issued in this State?
A. Yes, sir.
Q. How long have you had that certificate?
A. Since July, 1927.
Q. July, 1927?
A. Yes, sir.
Q. What degree, if any, do you have, and from what school?
A. I am a graduate of the University of Texas, and have a Bachelor of Business Administration degree.
[fol. 772] Q. Is that the degree issued by the University School of Business Administration at Austin, Texas?
A. Yes, sir.
Q. Mr. Lewis, I will ask you when you first began your work in connection with the auditing of the books and records of the then South Texas Gas Company and Border Gas Company—approximately when you began.
A. I don't know the exact date. It was about the first of July, 1931.
Q. At that time you were a member of the firm of—what was the name of the auditing firm?
A. I was not a member of the firm; I was in the employ of Rodgers, Smith & Company, of San Antonio.

Q. Rodgers, Smith & Company. What is their business?
A. Public accountants.
Q. Where are they located?
A. In San Antonio.
Q. And you say you began working at Laredo or Houston —where did you begin the work?

The Court: Do you mean the first work you did as a Certified Accountant or——
The Witness: No, on this job.
Mr. Lange: No, I was referring to this case.
The Court: All right.

Q. To go back—prior to that, though, what character of [fol. 773] auditing work did you do prior to beginning on this case, with reference to auditing books and records of utility companies?
A. Well, my work as a public accountant, of course, has been in every type of business and industry, and aside from this job the only major utility work I have done for rate purposes was in connection with the Lone Star Gas investigation that was conducted by the Railroad Commission.
Q. When was that conducted and how long—how long were you employed on that work?
A. From sometime in December, 1931, until about the first of June, 1932.
Q. And that covered what period of operations of that company?
A. Five years.
Q. Five years?
A. Yes, sir.
Q. What was the approximate amount of property value in that case?
A. I don't recall the property value; I think their transmission lines—I don't even recall the mileage; I think it was somewhere around four thousand miles.
Q. Was it the Lone Star Gas System?
A. The Star Gas Company.
Q. The Lone Star Gas Company, operating in the State of [fol. 774] Texas?
A. And Oklahoma.
Q. And Oklahoma?
A. Yes, sir.
Q. And who employed you in that work?

A. My company was employed by the Railroad Commission in connection with that work.

Q. The Railroad Commission of Texas?

A. And the J. A. Phillips Company, of Houston, were also on the same job. We worked it together.

Q. In speaking of the Railroad Commission, you mean the Railroad Commission of Texas?

A. Yes. And we did the same work for the Railroad Commission of Oklahoma.

Q. In connection with what, the valuation of those properties or the preparation of operating statements, was it?

A. Well, we made an audit of operations and made studies of the historical costs of the transmission properties from the time of the incorporation of the company, somewhere around 1909, or 1910; I don't recall the exact time.

Q. The part of the work affecting the Oklahoma part of the system, was that valued at that time by the Oklahoma Commission—was that the occasion of this work there?

A. At the time we did the work for the Texas Commis- [fol. 775] sion—I say we did the work for the Texas Commission; it was not directly for the Texas Commission; we did the work for the engineers who were employed by the Texas Commission, and at that time the Oklahoma Commission availed themselves of the services of that engineering firm, and we did the accounting on that engagement.

Q. What was the name of that engineering firm?

A. Hawley, Freese & Nichols.

Q. Where are their headquarters?

A. Fort Worth.

Q. Fort Worth? Now, Mr. Lewis, referring back to this particular case, approximately what month did you begin the work, and in what year?

A. The first assignment we had was covering the old Border Gas Company's operations and the operations of the Texas Border Gas Company and the South Texas Gas Company for the year ended February 28, 1931; that work was started about July 1, 1931.

Q. And how long were you engaged in doing that auditing work—approximately how long?

A. Approximately three months.

Q. Approximately three months?

A. That engagement was supplemented and the work brought down to June, 1931, before the engagement was finished.

Q. Well, how much?

A. Why, I think about three months total time.

[fol. 776] Q. And then how much, if any, additional time did you put in on this work?

A. In 1932 before, the Commission hearing last year, we did some additional work down to July 31, 1932, and I was on that work something like two or three months, I think; I am not sure of the exact time that was put in.

Q. And the last supplemental work, low long were you on that and when?

A. Well, this last engagement was, first, for the year ended October 31, 1933, and then was extended to include December 31, 1933, and I was on that work something like—somewhere between sixty and ninety days, I should say—the months of December and January and part of February.

Q. Now, who in connection with the firm of F. G. Rodgers & Company worked with you on all or part of this work?

A. Well, I had a number of men doing some parts of the work—sometimes as many as four or five. Do you want me to name all of them?

Q. Who was the senior accountant in charge of the part of the work that you did not do?

A. Mr. Kinney.

Q. What are his initials?

A. Mr. J. P. Kinney.

Q. J. P. Kinney.

A. He made the investigations of the old Border Gas [fol. 777] Company up to the time of its—the change in ownership at April 10, 1928.

Q. Now, what part of the work did Mr. Kinney do in connection with this audit—what period?

A. From the incorporation of the old Border Gas Company in 1910 or 1911, I believe it was, until the Border Gas Company was sold to the South Texas in April, 1928.

Q. Now, in connection with this auditing work for the City of Laredo, I will ask you whether you prepared an exhibit reflecting computations taken from the books and records of the company—is this an exhibit which you prepared on the historical costs of the properties? (Counsel hands document to witness.)

A. Yes, I prepared this exhibit.

Mr. Coates: May it be understood that we will make a superficial examination of these exhibits as they come, for

the purpose of seeing whether there are any objections apparent on the face of them, and then within a reasonable time after we have had them and made a fuller examination of them may we at that time, if any material objection discloses itself make the objection?

The Court: No; I will let you do this; I will let you examine them now for anything apparent on its face, and [fol. 778] if you don't find anything, it will go into the record; then, if you later find the whole record objectionable you may make a motion to strike, and I will consider it then.

Mr. Coates: Very well.

The Court: Or strike any item which you may later find objectionable.

Mr. Lange: We desire at this time to introduce this exhibit in evidence as Plaintiffs' Exhibit No. 4.

The Court: Now, do you desire to offer at this time any objection to this?

Mr. Coates: Not at this time.

The Court: All right; it is admitted, then.

(Thereupon the document above referred to was marked Plaintiffs' Exhibit No. 4. This exhibit appears in Volume of Exhibits III, page 1771.)

Q. Mr. Lewis, turning to page 2 of the exhibit, what does the heading on page 2 recite?

A. The title?

Q. Yes.

A. The Border Gas Company, Texas Border Gas Company, and South Texas Gas Company, Historical Cost of Fixed Capital as Shown by Books.

Q. Now, Mr. Lewis——

A. And there is an asterisk referring to a foot-note there that the additions identified as pertaining to the transmission line from Jennings to Roma have been eliminated in [fol. 779] making this study.

Q. Now, I will ask you whether the first part of the auditing work reflected in this exhibit was computed by Mr. Kinney from the books and records of the Company?

A. Mr. Kinney made the audit of the old Border Gas Company from 1910 to April 10, 1928, and the figures appearing upon this schedule as historical cost and the provision for depreciation charged to operations were computed by him down to the time the properties were transferred to South Texas Gas Company, and from that point on——

Q. Just indicate where that point is—where you began your work in connection with this exhibit.

A. About the middle of the exhibit, where it states "Total books costs of properties transferred to South Texas Gas Company".

Q. The work ahead of that was performed by Mr. Kinney?

A. Yes, sir.

Q. Mr. Lewis, proceeding on page 2, the exhibit reflects the heading South Texas Gas Company and Texas Border Gas Company, beginning with the period of April 10, 1928, to December 31, 1928; and under the general heading of Historical Cost per Books, explain the columns as they appear. The first column is Additions, and the next is Retirements, and then the third reads Net Additions, and the fourth Accumulated Additions. Is that the three studies in that——

[fol. 780] A. In the first column of Additions you will note in this section there are two lines for each period, one of them has the letter "S" and the other the letter "T"; those on the line with the letter "S" are additions and retirements to the South Texas Gas Company, and those indicated by the letter "T" are the additions and retirements to the Texas Border Gas Company. In the first column I have shown the additions to the fixed capital account, as per the books of the Company, and in the second column the retirements——

Q. New——

A. —or the deductions from the fixed capital account, as per the books of the company.

[fol. 781] Q. Just explain what you mean by the fixed capital account?

A. Fixed capital account is the title of the account shown on the company's books on which are entered the costs of all property additions and items termed, in accounting practice, as capital expenditures or expenditures for the plant or equipment, or organization expenses and items of that nature which are not normally charged to operating expenses.

Q. Capital accounts as distinguished from the operations of the company?

A. Yes.

Q. Now, the next column, headed retirements; what does that represent?

A. That is the retirements of fixed properties, as shown by the books of the company, for the periods indicated, or the reductions in fixed capital.

Q. And the next column, Net Additions; explain that.

A. That is just a net figure; the net figure between additions and retirements for any period.

Q. What is that figure there of $1,042,811.75; what does that represent?

A. That is the accumulated additions down to the last date; in other words, taking the balance at the end or at the beginning of the year, and adding on the net additions for the year, we get the balance for the close of the period.

Q. In the succeeding columns, headed Depreciation as Per Books, in the first of which is the provision for depreciation charged to operations; explain that.

[fol. 782]

A. The items in that column are the charges to operating accounts or depreciation account for the depreciation for that particular period, and they have been charged to operations and set up in a depreciation reserve. The figures shown in that column is provision for depreciation charged to operations, are the actual provisions made on the company books, except that I have adjusted those figures for the Roma-Jennings property that I eliminated from the fixed capital side.

Q. Then proceeding under the next heading, less charges to reserve, what does that represent?

A. That represents charges against this reserve for losses the company has in retirements.

Q. The column headed accumulated depreciation per company books; what does that represent?

A. That represents the balance of the reserve after deducting from the accumulated reserve the charges for retirements, but in this case deducting an additional amount for retirement expense charged to operating accounts.

Q. And that item is the depreciation accumulated as it appeared on the company's books for that period?

A. At the end of the period shown.

Q. And the two succeeding columns, adjusted depreciation; are those computations that you have made?

A. Yes.

Mr. Coates: Now just a moment; if the Court please, we [fol. 783] object to the question and answer sought to be elicited from the witness, and likewise to the two right-hand

columns on page 2 of Plaintiff's Exhibit 4, in so far as they are offered to show or tending to show a proper amount of reserve accrual for this company's property, because it appears from this exhibit that the capital additions to the company's property were added from year to year, and the accumulations in the reserve at this computation of three percent, furnish no adequate criterion of the accumulations in the reserve which should be there, and which are necessary to be there in order to preserve the integrity of the property as of this particular date.

The Court: Let me see if I understand where I am. Now these last two columns that have been referred to, Mr. Witness, are they calculations of yours, or are they figures shown on the books of the company?

A. The last two columns indicate what the accumulated reserve would be——

The Court: I am not talking about that, but are they figures that you have taken from their books, or are they calculations of yours?

A. They are calculations made by me.

The Court: From figures taken from the books?

A. From figures taken from the books.

The Court: And what do you intend to show—let me understand that.

A. We have set up the provision for depreciation as [fol. 784] shown by the company's books, less the charges shown by the company books, and have arrived at the accumulated depreciation per the books. Then, at the actual rates used by the company—it is not at any particular rate per annum, but is the actual book figures. Then we have set up what the provision would have been in these last two columns, had the depreciation been set up at an annual rate of three per cent.

The Court: Mr. Coates, do you understand that?

Mr. Coates: Yes.

The Court: And you object to what it would show, figured at three per cent?

Mr. Coates: in so far as it is offered to show what the proper credit reserve should be, or balance, as at the date March—or October 21, 1932, I believe it is.

The Court: I am not sure that I understand your objection, but I overrule it on the theory that this witness says this is simply a calculation of his, for the purpose of show-

ing what the depreciation would be or would have been at three per cent. I admit it for the purpose of showing his calculation.

Mr. Coates: Note our exception. And may it be understood between counsel, that where we make an objection to a particular line of testimony, that that objection goes to that line of testimony relating to that particular thing, without repeating that objection?

The Court: You may so far as I am concerned, provided it is strictly along that line.

[fol. 785] Mr. Coates: And if there is any doubt about it, we will repeat it.

The Court: If there is any doubt about it, you had better repeat it.

Q. And you stated the items reflected under those two columns are adjustments by you, computing it at a rate of depreciation for the accumulation set up, of three per cent—if such a rate of three per cent had been applied?

The Court: I did not understand they were adjustments, but were calculations.

Q. That is correct.

Mr. Coates: Are they calculations or adjustments?

A. They are calculations, designed to show what the provision for reserve would be had the rate of three per cent been used.

Q. Referring further to page 2, the bottom of the page, Total Book Cost of Properties Transferred to United Gas Public Service Company". Where is that total reflected?

A. The total book cost of properties transferred to United Gas Public Service Company is $1,049,735.38 at October 21, 1932.

Q. $1,049,735.38; and referring further as to the depreciation as per the books, what does the figure of $758,061.64 reflect?

A. The figure of $758,061.64 represents the total provision for reserve set up on the company's books for the periods indicated, eliminating the reserve applicable to those lines from Roma to Jennings.

Q. And the column, accumulated depreciation as per the [fol. 786] company books, of $499,707.47?

A. That is the balance of the depreciation reserve per the company books after charging against that reserve the re-

tirement expenses and losses as per the company books, with of course the same qualification as to the Jennings-Roma lines.

Q. In other words, the Jennings-Roma lines are eliminated from that?

A. They are on this statement, yes.

Q. And on the next succeeding column, under Adjusted depreciation if depreciation is at three per cent; that is the depreciation you have calculated if three per cent had been applied?

Mr. Coates: The same objection.

Q. Making a total of $384,913.30?

A. That is the total provision for depreciation during the periods shown, at the rate of three per cent.

Q. If that rate had been applied?

A. Had that rate been used, yes.

Q. Now, Mr. Lewis, referring back to the item on that page of the total book cost of the properties transferred to the United Gas Public Service Company, please state what the records of the company show with reference to the amount set up at the time that property was transferred?

The Court: From whom to whom?

Q. From South Texas Gas Company and Texas Border Gas Company to United Gas Public Service Company.

A. You mean the amount at which these properties were [fol. 787] set up on the books of the United Gas Public Service Company, when they were transferred?

Q. Yes.

Mr. Coates: And as of what date?

A. These properties, shown on the exhibit, and also the Roma-Jennings Lines, were transferred to the United Gas Public Service Company on October 21, 1932, and the journal entry setting up those properties places them on the United Gas Public Service Company's books at $934,798.02, with a reserve for depreciation of $78,632.20.

Q. And what is the date of that entry?

A. October 21, 1932.

Q. And that, as I understand it, includes not only the properties that you had set up in this exhibit, but also includes the Roma-Jennings line?

A. The explanation of that journal voucher is, "to record acquisition of properties, assets and assumption of liabilities of South Texas Gas Company under agreement dated October 21, 1932". I might add that the Texas Border properties were first transferred to the South Texas Gas Company and then the total transferred to the United Gas Public Service Company, and this is the journal voucher or a transcript of the journal voucher setting up the transfer.

The Court: And the question was, does that include the Jennings-Roma line as well?

A. It purports to include all the properties, including that line.

[fol. 788] Q. Now then, did you find anything in the books and records of the company, the amount they set up for the Roma-Jennings line; the cost of that line?

A. You mean the cost when it was built—the cost to the South Texas Gas Company?

Q. Yes.

A. Yes, I think I can give you that—no, I cannot give you that figure, except including a telephone line that was built.

Q. This transfer of properties, according to that journal entry, included all the properties of the company, didn't it?

A. It purports to, from the explanation on the journal voucher.

Q. And your figures include the telephone line, as well as the Roma line?

A. I do not have the Roma line here, but I can give you the * * * The items of additions definitely identified as pertaining to that Jennings-Roma line, total cost to South Texas Gas Company per their books, was $963,942.73.

Q. Of the Roma line alone?

A. Yes, that is the Jennings-Roma line. No—that includes some gathering lines. That is the amount I have eliminated in preparing this statement for the Monterrey line, which includes gathering lines, the telephone line, and some meter and regulator stations. The Roma line was set up—the first item charged on the books to the Roma-Jennings line was in one journal voucher in 1929, setting up the cost of the line, which includes, I think, the telephone line, at $848,232.98.

[fol. 789] Q. Where does that entry appear in the company books?

A. That is the entry on the South Texas Gas Company books in December, 1929, setting up the cost of the Roma-Jennings line.

Q. And in making these computations, you have eliminated the Roma-Jennings line entirely?

A. Yes.

Q. And the journal entry you just spoke of, when the properties were transferred from the South Texas and the Texas Border to United Gas Public Service Company, contemplated the entire properties?

A. Yes.

Q. Including the Roma lines?

A. Yes.

Q. And that entry was—if you will give it to us again, please, the total entry, including all the properties?

A. The total amount charged to fixed capital account on the United Gas Public Service Company's books, in transferring these properties, is $934,798.02, and a depreciation reserve of $78,632.20.

Mr. Coates: Will you identify that entry, Mr. Lewis?

A. That is J-10-156 of the United Gas Public Service Company books.

Q. Mr. Lewis, turning to page 1 of the exhibit, Historical Cost Per Books, the first item appearing there of $1,049,735.38; where is that carried forward from?

A. From the fourth column from the left of page 2, cumulative additions transferred to United Gas Public Serv- [fol. 790] ice Company on October 21, 1932.

Q. And that figure is exclusive of the Roma line?

A. Yes.

Q. Now, about the middle of the page, historical cost of properties, December 31, 1933, on page 1 of the Exhibit, the sum of $1,151,993.65; what does that reflect?

A. That represents the historical cost of these properties that were transferred to United Gas Public Service Company on October 21, 1932, plus the net additions that the United Gas Public Service Company had made to those properties at December 31, 1933.

Q. Now, the next column, Retirement Reserves; just explain that to the Court and the jury.

A. The item of accrued book reserves on properties transferred, of $499,707.47, represents the accumulated or the net depreciation after charging retirements, from 1910, through

October 21, 1932—the depreciation accumulated on the properties that were transferred to the United Gas Public Service Co.

Mr. Coates: Do you mean the net credit balance in the depreciation reserve was set up on the books?

A. Well, it is hard to say it exactly, because there have been a number of mergers, and each time this was wiped out and they started over; but this represents the total cumulative reserve in all the properties.

Mr. Coates: You said the total depreciation reserve on the properties, and I wondered if you meant that.

[fol. 791] A. Perhaps I had better start over, then. I will put it this way—the $499,707.47 represents the net accumulations of depreciation reserves set up on these properties from 1910 to October 21, 1932, per the company's books.

Q. Now, the next main heading, Retirement Reserves, adjusted to three percent; explain that calculation.

The Court: Do you mean Adjusted, or Calculated?

Mr. Lange: It is calculated, and not adjusted.

The Court: I understand calculated and adjusted mean two different things, and I might be wrong about that but I want to be right on these things.

Mr. Lange: It is a calculation.

A. That section indicates that the depreciation reserve would be on these properties, had a rate of three percent been used—that is, an annual rate of three percent been used for providing depreciation reserves.

Q. And the total reflected at the bottom of that page, of $135,349.81; what is that?

A. That is the balance that would be in the depreciation reserve had depreciation been computed at three percent per annum.

Q. Now, Mr. Lewis, referring back to page 2 of the exhibit——

The Court: Let me ask a question right here: Your last column at the bottom of the page here, of $126,559.13——

A. That is carried forward from page 2.

The Court: I am looking at page 2 now; see here, I have my finger right on it—as a matter of book keeping, why [fol. 792] shouldn't that be the difference between the next two columns to the left?

A. No, because the second column to the left is the actual depreciation per the company books, and these last two columns are entirely independent of the book depreciation but use as a basis the cost of the assets and use a rate of three percent to compute depreciation.

Mr. Coates: Now, Mr. Lange, I don't want to break in, but are you using the term depreciation and accumulated depreciation in each case in your testimony to designate balances in the depreciation reserve account?

A. When I have referred to accumulated depreciation, that is what I mean, yes.

Mr. Coates: That is the book entries?

A. Yes. Now, this figure of $126,000.00, accumulated depreciation at October 21, 1932, is the balance that would have been in the depreciation reserve account, had depreciation been computed at three percent per annum on the cost of the properties.

Mr. Coates: Now, I want to make an objection right there——

The Court: The witness hasn't finished his statement.

A. That $126,000.00 figure is the $384,000.00 in the second column to the left, which was the total provision, less the figure of $206,496.46, which amounts have actually been charged to the reserves of the company on the company books, and the item of $51,857.71.

[fols. 793-795] The Court: Now, let's see if I got that: The figure $206,000.00 in the fifth column to the left, plus the $51,000.00 in the fourth column to the left, added together and subtracted from the $384,000.00, would give you the $126,000.00?

A. That's right, and——

Mr. Coates: Now, at this time, the Defendant;——

The Court: Wait just a bit; I think the witness wants to make a further explanation there.

A. The book figure or the accumulated depreciation as per the company books, $758,000.00 which was actually set up on the books under the provision for depreciation charged to operations, less the $206,000.00 and the $51,000.00——

* * * * * * *

[fol. 796] Q. Mr. Lewis, in connection with your auditing work for the City of Laredo in this case, I will ask you whether you prepared another operating exhibit?

A. Yes.

Q. What does that exhibit reflect?

A. It is a statement of earnings of the Border Gas Company from January 1, 1911 to December 31, 1924, and a statement of earnings of the Border Gas, Texas Border, and South Texas for the year 1928; and statement of the earnings of the Texas Border Gas Company and South Texas Gas Company for the years 1929, 1930, and 1931.

Mr. Coates: To which defendant objects for the reason that these operating statements serve no useful purpose, and are immaterial and irrelevant to any issue in this case, and can only be an attempt to use earnings, or lack of earnings, in prior periods not closely related in time, nor remotely connected in time, with the date of this inquiry, and the date of the Commission's order, and relate to operating results at and during periods of a different economic era, which economic era shows and furnishes no criterion of the requirements of this company at this time.

[fol. 797] The Court: As in the other instance, I overrule the objection now and admit it.

Mr. Lange: We desire to introduce this exhibit in evidence.

Mr. Coates: We desire to make a part of our objection here each and all of the reasons we set forth in our objection to the Commission's Order dated June 13, 1933.

(Thereupon the plaintiff introduced in evidence the exhibit above referred to, and same was marked as Plaintiff's Exhibit No. 5, and a copy thereof is attached hereto and made a part of this Statement of Facts, and appears in Volume of Exhibits III, page 1774.)

* * * * * * *

[fol. 798] Thursday, March 15, 1934

Evening Session: 7 P. M.

Mr. Lange: If the Court please, we have the witness Kinney here and we will put him on now.

The Court: All right.

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 13

UNITED GAS PUBLIC SERVICE COMPANY,
APPELLANT,

vs.

STATE OF TEXAS, MRS. MIRIAM A. FERGUSON,
FORMER GOVERNOR OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

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JOHN PATRICK KINNEY, a witness for the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name, please.
A. John Patrick Kinney.
Q. Where do you reside?
A. San Antonio, Texas.
Q. What is your occupation?
A. Certified public accountant.
Q. How long have you been in that occupation?
A. About twenty years.
Q. Have you had occasion during the twenty years of that work to make any audits of any utilities properties?
A. Yes, sir.
Q. Can you give us the names of the utility companies that you made audits for, or the cities that you made utility audits for?
[fol. 799] A. Well, I would say about fifty-two cities that I have made audits for that have utilities in connection with them. I made audits for the city of Austin waterworks here a number of years ago, for the San Antonio Water Board, the Southern Light & Utility Company, Dallas, up through the northern section, and down in Mexico for the gas companies and light and power companies down there, and numerous audits of other and smaller utilities, both municipally owned and owned outright.
Q. Are you a member of the auditing firm of F. G. Rodgers & Company?
A. Yes, sir.
Q. When did you first have occasion to begin work in connection with the audit of the books of the South Texas Gas Company and the Border Gas Company?
A. About July, 1931.
Q. What did you do at that time, and how long were you in that first engagement?
A. That first engagement was a question of starting right from the inception of what was known as the Border Gas Company, starting January 1, 1911, and coming down to December 31, 1924; that was the first engagement.

Q. All right.

A. We took then the years of 1925, 1926, and 1927, down to April 10, 1928, and that was as far as my activities went.

[fol. 800] Q. Is Mr. L. O. Lewis also a certified public accountant engaged in that work with you?

A. Yes, sir; with the same firm.

Q. Will you examine this Exhibit 4 that has been introduced, Mr. Kinney?

A. Yes, sir.

Q. Mr. Kinney, when you first began the work in connection with this audit what did you do?

A. The first thing that I had to do was to get hold of records, and I spent considerable time in locating records.

Q. Whom did you get in touch with at the Gas Company?

A. Mr. Robertson, who was then Manager, I believe, of the Laredo unit, and his chief accountant, I think his name was Thorne.

Q. You inquired of them and requested them to give you access to the records and books of the company for the purpose of making this audit?

A. Yes, sir.

Q. All right; what did you do then?

A. Well, I asked for certain records, and they were not produced at that time. Certain records were given me, and then I believe Mr. Robertson, with Mr. Thorne, showed me where the vault was in the Laredo office, showed me where the papers and records were, and told me what I needed to go and get.

Q. What did you do then?

[fol. 801] A. I tried to get the original documents right at the inception of the company.

Q. You are speaking of the——

A. Of the Border Gas Company.

Q. And what documents were furnished to you in connection with that?

A. Well, the old ledgers of the Border Gas Company, they were given to me. They run down for several years; and then certain vouchers, letters, and such as that were handed to me, pertaining to the inception of the Border Gas Company. Some of the papers pertained to the franchise holders previously, I think, Johnson and Reiser.

Q. In connection with those records that were furnished to you by the Company, I will ask you whether this inventory is one?

A. Yes, sir.
Q. Together with the letter accompanying it?
A. Yes, sir; they were both attached.
Q. What is the date of that letter?
A. April 14, 1921.
Q. And the inventory attached to it?
A. December 31, 1910.

Mr. Lange: We desire at this time to introduce this letter and inventory in evidence. It was identified yesterday by Mr. Stein as having been signed by him.

(Thereupon the letter and attached inventory referred [fol. 802] to above were offered in evidence, and marked Plaintiff's Exhibit No. 6, and same is attached hereto and made a part of this Statement of Facts, and appears in Volume of Exhibits III, page 1779.)

Q. Will you look at this letter, Mr. Kinney, and the inventory attached to it?
A. Yes, sir.
Q. How did you then proceed in connection with this matter? What does the letter represent? First, what does it say?
A. The letter is written by Mr. Stein to Mr. G. R. Page, Houston, Texas, and it is outlining the analysis of the investment.

Mr. Lange: I will just read it. It is dated at Laredo, Texas, April 14, 1921. (Reads as follows:)

"Mr. G. R. Page, Houston, Texas.

DEAR SIR:

The enclosed copy of trial balance and copy of analysis of investment as of December 31, 1910, covers our record of property acquired by the old company prior to January 1, 1911 when the present accounts of Border Gas Company were begun. All vouchers and other records, I understand, were sent to Houston when the original plant was completed and turned over to Border Gas Compsny.

From information I have been able to obtain all of this property was purchased by the old company during the calendar year 1910, all of the construction work having been begun and completed during that year.

[fol. 803] Trusting that this will enable you to prepare the statement as outlined in your letter, I am

Very truly yours, (Signed) W. W. Stein."

Mr. Lange: Now, the enclosed trial balance referred to in that letter reads as follows (reads):

"Border Gas Company

Analysis of Investment

Statement, December 31, 1910

Real Estate				150.00
Rights of Way				10.93
Buildings				14.72
Tools				34.13
Fittings				17,364.05
Telephone Line from Reiser to Laredo				1,601.95
Labor, Teaming, Freight & Miscellaneous				31,718.83
Gas Receivers and Regulators				2,382.20
Gas Meters				5,791.00
Office Furniture				332.68
Horses and Wagons				225.00
Automobile				1,535.00
Line Pipe Size	Length Feet	Inches		
1"	3,039'	9"	130.49	
1¼"	3,034'	4"	177.04	
2"	28,905'	8"	2,684.66	
[fol. 804]				
3"	34,562'	2"	5,527.21	
4"	89,203'	4"	22,316.43	
6"	36,672'	4"	13,032.26	
8"	128,649'	2"	71,838.25	
10¾"	2,213'	4"	1,862.03	
12¾"	155'	11"	163.64	
16"	150'	7"	208.60	
				117,940.61
Total Investment				179,101.10

Border Gas Company

Balance Sheet, December 31, 1910

Investment	179,101.10	
Gas Ledger	648.23	
Warehouse Account	923.94	
Cash—Milmo National Bank	2,896.69	
Petty Cash	69.23	
Southern Trust Company		182,990.96
Gas Earnings		516.58
Producers Oil Company		131.65
	183,639.19	183,639.19

[fol. 805] Q. Mr. Kinney, in connection with this inventory what original books of entry did you find as beginning or opening entries of the Border Gas Company?

A. I found Journal Voucher Number 1, which debited Plant and Equipment $550,000.00, and credited Capital Stock $300,000.00 and Surplus $250,000.00. That was the only opening entry on the Border Gas Company's books.

Q. That was the only one of their original books?

A. Yes, sir.

Q. That you found among their records?

A. Yes, sir.

Q. How did you then proceed in making your opening entry of this audit—your beginning point of this audit?

A. Naturally, I wanted to know what the Plant and Equipment were, $550,000.00. I wanted an analysis of it, to see what the stock was issued for and the surplus. And after considerable looking and digging around in the vaults I ran across some inventory sheets—tax returns made to the Government, tax claims, and such as that, and began to unearth some of the individual detailed analysis sheets, which I tried to tie back into the opening entry. Not being able to do that, for the tax returns disclosed the actual amounts on which depreciations were being taken by the Company there at that time was taken on the basis of $166,996.68, I believe, and the records showed that the balance of the $383,000.00 was the value of intangibles, good [fol. 806] will, and such as that, making up the $550,000.00 for which the opening journal entry was set up.

Q. How did you finally arrive at the beginning point of $166,996.68, as shown at the top of page 2 of Exhibit 4?

A. Well, that was the basis as shown here on this trial balance and analysis of investment, as they call it, after a credit that went to Materials and Supplies amounting to $12,104.42 that was taken off of this investment of $179,-101.10. That made the $166,996.68, which was further verified by actual Journal vouchers, on which the Company was computing their depreciation when they did start computing it regularly.

Q. How later in years did the Company use that $166,-996.68 in connection with the computation of their depreciation?

A. They were using that up to the time I stopped.

Q. What year was that?

A. 1928. That ran through the yearly journal entries in setting up their depreciation.

Q. In connection with those original records furnished you at the time by the Manager of the Company, I will ask you whether this is another letter that was among those?

A. Yes, sir; that was attached to a capital stock tax return.

Mr. Lange: We desire at this time to introduce this letter in evidence. It was also identified by Mr. Stein.

Mr. Coates: Do you have the statement of Sinking Fund and Depreciation account to which this letter refers?

Q. Do you have that, Mr. Kinney—the statement of Sink-
[fol. 807] ing Fund and Depreciation as of December 31, 1921?

A. No, sir; that particular letter was attached to a copy of a capital stock tax return.

Mr. Stout: Do you all have it?

Mr. Coates: Well, we haven't got it here.

Mr. Lange: This letter is dated Laredo, Texas, June 26, 1923, "Capital Stock Tax Return, Form 707, 1923, for taxable period ended June 30, 1923," and reads (reads):

"Mr. G. R. Page, Houston, Texas.

DEAR SIR:

Copy of letter received from the office of the Commissioner of Internal Revenue requesting additional information in re above return, is enclosed.

A statement of Sinking Fund and Depreciation account of December 31, 1921 is also enclosed. Kindly advise explanation to be made regarding difference between book value and fair value shown on return.

The following explanation made to the Commissioner Feb. 25, 1921, regarding the difference in 'Plant Account' on our 1920 and 1921 return will probably suffice to explain this account satisfactorily: 'it represents property acquired at the time of organization of the Company in 1911 and included tangible property that originally cost $166,966.68, as well as franchise, good will, etc., of a going concern. It is the opinion of the officers of the Company that [fol. 808] the amount shown in the 'Fair Value' column of our Capital Stock Tax Return was the true value of the property on the date reported.''

Kindly advise in regard to the above, and oblige.

Yours very truly, (Signed) W. W. Stein.''

(Copy of the above letter is attached hereto as Plaintiff's Exhibit No. 7, and made a part of this Statement of Facts, and appears in Volume of Exhibits III, page 1783.)

Mr. Coates: Was there among those records that you dug up this capital stock return to which this letter refers?

A. If I am not mistaken there was a copy of a capital stock tax return attached to that letter. Of course, the original was naturally given to Washington.

Q. Mr. Kinney, you stated that that item of $166,996.68 was reflected on the Company's books in the computation of their depreciation account as late as 1928?

A. Yes, sir; after the first five years. No depreciation showed up for the first five years at all.

Q. And after that it appeared how?

A. It appeared through yearly Journal vouchers setting up the depreciation, in which they deducted this three hundred odd thousand dollars, leaving this other to compute depreciation on.

[fol. 809] Q. Turn to this Exhibit No. 4, page 2, beginning at the top left of the page, ''Border Gas Company, 1910, Construction''—what is this opening entry, $166,996.68, as it appears on this subject?

A. That reflects the original investment on the books.

Q. Of this property?

A. Of properties taken over from the franchise holders.

Q. As of what date?

A. As of January 1, 1911.

Q. And the next column to the right, "Retirements", what does that reflect?

A. That just reflects credits into various equipment accounts during the years in which they are shown—credits out to that account.

Q. And the next column "Net Additions"?

A. That is net additions for each year.

Q. And "Accumulated Additions"?

A. That is the total at the end of each year.

Q. And each of those columns is carried down from January 1, 1911 to April 10, 1928?

A. Yes, sir.

Q. Do those items correctly reflect the Company's records during those periods?

A. These are taken from the Company's records.

Q. Following that appears this statement "Total Book Cost of Properties Transferred to South Texas Gas Company—that is as of April 10, 1928?

A. Yes.

[fol. 810] Q. Where does your total book cost of those properties as of that date appear in the exhibit?

A. In the "Accumulated Addition" column.

Q. What figure is represented there?

A. That "Accumulated Additions".

Q. That is the figure $1,006,512.13?

A. Yes, sir.

Q. The items to the right under the heading "Depreciation per Books", in four columns, do those reflect the actual figures as they appear on the Company's books?

A. Yes, sir.

Q. And the total under "Provision for Depreciation Charged to Operations" is $634,604.34, that is as of February 10, 1928?

A. April 10, 1928.

Q. And the "Accumulated Depreciation per Company Books" as of April 10, 1928 is $531,355.71?

A. Yes, sir.

Q. The figures appearing to the right in the two columns, they were not prepared by you and do not reflect any book entries, do they?

A. No, sir.

Q. Those were calculated by Mr. Lewis?

A. Yes, sir.

Q. And after you had made your audit of the Company's books and records from the beginning period of January 1, 1911 down to April 10, 1928, Mr. Lewis carried on from there and completed the audit, is that correct?

A. Yes, sir.

[fol. 811] Q. And how much time did you put in on that portion of the audit, approximately?

A. I would say, myself and assistants, some sixty days probably. I could not recall the exact number of days; but approximately about sixty days with myself and one or two assistants.

Q. I believe you stated that you have had twenty years accounting experience?

A. Yes, sir.

Q. And as a certified public accountant, how long?

A. In Texas for the last year or so.

Q. And this work after Mr. Lewis had computed the period down to October 21, 1932, and continuing down to December 31, 1933, you did not have occasion to work with him on any of the succeeding periods after April 10, 1928?

A. After April 10, 1928 I had nothing whatsoever to do with the audit.

Mr. Lange: I think that is all.

Mr. Coates: We will cross examine him in the morning when we have had a chance to look this over.

Mr. Lange: This Exhibit 5, which was introduced before recess this afternoon, part of this was prepared by this witness also.

Mr. Coates: We renew our objection to this exhibit. Does the Court make the same ruling to our objection?

The Court: Yes, sir.

Q. Mr. Kinney, in connection with your work of auditing the books of the Border Gas Company, turn to page 2 of Exhibit 5.

[fol. 812] Mr. Coates: Now, I am assuming that our objection goes to all testimony of every kind with respect to the matters therein contained.

The Court: All right.

Mr. Coates: Note our exception.

Q. Mr. Kinney, just tell us what this exhibit represents.

A. It just represents the revenues and operating ex-

penses from January 1, 1911 through down to December 31, 1924 of the Border Gas Company, as shown by their records at Laredo.

Q. Does this reflect a part of the audit made by you?

A. Yes, sir.

Q. And turn to page 2 of that exhibit: The first classification is Operating Revenues, reflecting gas earnings (net), warehouse earnings, and other operating revenues, and total operating revenues, for the first period, January 1, 1911, to June 30, 1912. What does the figure $70,023.75 represent?

A. Represents the Earnings as shown by the Company's ledger revenue accounts.

Q. That is the total earnings for that year ending June 30, 1912?

A. That was a little more than a year; it was from January 1, 1911 to June 30, 1912. They did not seem to close their books regularly; sometimes in the middle of the year, and sometimes at the end of the year, and sometimes skip, first one way and then the other—a short of haphazard way of keeping these records at that time.

[fol. 813] Q. The next year, immediately following, you had fiscal years ending regularly on June 30, 1913, June 30, 1914, June 30, 1915, June 30, 1916, June 30, 1917, June 30, 1918, and June 30, 1919?

A. Yes, sir.

Q. And immediately below the Operating Revenues you have a classification of Operating Expenses. What does that represent?

A. That represents the classification of Operating Expenses as used by the Company and their records at Laredo.

Q. For each of the years that you have operating revenues?

A. That we have shown.

Q. In other words, for the period beginning January 1, 1911 to June 30, 1912 you have all Operating Revenues, and you apply against that the operating Expenses for the same period?

A. Yes, sir.

Q. What is the Net Return for that period before providing for Depreciation and Income Tax?

A. $46,185.90.

Q. Then the Net Return for the fiscal year ending June 30, 1913?

A. $43,611.35.

Q. For 1914?

A. $31,036.40.

Mr. Coates: Are each of these figures before providing for depreciation and income tax?

A. Before providing for depreciation and income tax.

[fol. 814] Q. In 1915?

A. $33,114.32.

Q. In 1916?

A. $10,829.31.

Q. And in 1917?

A. $19,449.76.

Q. In 1918?

A. $49,562.05.

Q. 1919?

A. $59,460.36.

Q. Then you reflect the period beginning July 1, 1919, to December 31, 1919—that is less than a year.

A. They went on a calendar year basis then.

Q. And the net returns for that period is how much?

A. $30,724.14.

Q. And then after that you computed it on the basis of calendar years?

A. Yes, sir.

Q. For the years 1920, 1921, 1922, 1923, and 1924?

A. Yes, sir.

Q. The net returns for the calendar year 1920 is what?

A. $96,721.15.

Q. And 1921?

A. $92,399.77.

Q. And 1922?

A. $94,270.04.

[fol. 815] Q. And 1923?

A. $79,616.68.

Q. And 1924?

A. $117,588.74.

Q. Each of those net returns represents the net returns for the particular period as you have it directly applied to operating revenues for that period?

A. Yes, sir.

Q. That is, the operating expenses are directly applied to the revenues and leave you that net return?

A. Yes, sir.

Q. Turn to page 1 of that exhibit, Mr. Kinney, and——

Mr. Coates: The Court understands that all our objections—our objection goes to all this testimony?

The Court: Yes, sir.

Q. Up to what portion of the auditing period did you compute these figures from the Company's books?

A. Up to April 10, 1928.

Q. Now, you have the operating revenues, the operating expenses, and the net returns, first, for the years 1925, 1926, and 1927. Are those calendar years?

A. Calendar years, yes.

Q. For the year 1925 what is the net return?

A. $158,912.60.

Q. And for 1926?

A. $190,577.22.

[fol. 816] Q. And 1927?

A. $177,785.89.

Q. Now, at April 10, 1928, was that the time the Border Gas Company was dissolved and the two companies—the Texas Border and the South Texas Gas Company were created?

A. As far as I know, yes.

Q. Does your auditing work include that period from April 10, 1928, to December 31, 1928?

A. No, sir, Mr. Lewis——

Q. Mr. Lewis computed that?

A. —handled part of that.

Q. Then you did not proceed any further on that work beyond the 1927 period?

A. No, not for full years, no.

Q. And those figures reflect figures taken from the Company's books and records?

A. Yes, sir, without a detailed audit.

* * * * * * *

[fol. 817] Leon O. Lewis, a witness for plaintiffs, resumed his testimony and testified as follows:

Direct examination:

* * * * * * *

[fol. 818] Q. Now, the three periods of 1929, 1930, 1931,—are those computed on the calendar basis?

A. Yes, sir.

Q. The calendar year basis?

A. Yes, sir.

Q. And for the year 1929 what does the net return show?

A. $200,776.84.

Q. 1930?

A. $212,949.96.

[fol. 819] Q. And 1931?

A. $136,962.11.

Q. And the figures appearing in this exhibit reflect computations taken from the actual books and records of the Company?

A. Yes; except that the operations on the Monterrey line are eliminated on this exhibit.

Q. As shown in the foot-note?

A. Yes, sir. That Monterrey line started in full operations about the first of the year 1930; there were a little sales in 1929, and they are eliminated; so that the statement will be comparative all the way through.

Q. Well, Mr. Lewis, you stated that in connection with your work in making this audit for the City of Laredo you made supplemental audits bringing the audit periods finally down to and through December 31, 1933?

A. That is correct.

Q. Did you, in connection with the making of that audit over the period, prepare an exhibit?

A. Yes, sir.

Q. Will you examine that? (Counsel hands document to witness.)

Mr. Lange: We desire to introduce this in evidence, if the Court please.

Mr. Coates: Now, at this time we object to that part of the exhibit—it is the number of pages relating to the years [fol. 820] 1929, 1930, and 1931, for the same reason, and

for all of the reasons for which we heretofore, objected to Plaintiffs' Exhibit No. 5, dealing with prior years and not dealing with periods as to which this rate issue here relates, and as being too remote therefrom, and as attempting to have operating results in prior periods support a confiscatory rate for the present and future; and for each and all of the reasons for which we objected to the introduced in evidence of the Commission's opinion and order dated June 13, 1933.

The Court: I understand that you are not making the objection to the period for the years ending in 1932 and 1933?

Mr. Coates: I haven't thus far made any objection to that because I don't know how those operating statements were made.

The Court: Very well; for the present I will overrule the objection.

Mr. Coates: Note our exception.

Q. Will you identify the exhibit, please, Mr. Lewis?
A. Yes, I prepared this.

The Court: Well, one qualification, and that is he prepared it and prepared it from the books of the Company, and it is correct.

Mr. Lange: Yes; I will qualify it to that extent.

Mr. Coates: And we will make our objection after we [fol. 821] have had a reasonable time to see it and after we have examined it.

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 8. This exhibit appears in Volume of Exhibits III, page 1786.)

A. What is this exhibit number?

Q. No. 8—Plaintiffs' Exhibit No. 8. Mr. Lewis, this exhibit was prepared by you in connection with the making of this audit for the City of Laredo?

A. Yes, sir.

Q. From the books and records of the South Texas Gas Company, the Texas Border Gas Company, and the United Gas Public Service Company?

A. Yes, sir.

Q. Turn to page 1 of the exhibit, Mr. Lewis. Please explain the nature of the ——

Mr. Coates: At this time we object to the entire exhibit, and will, if we may, complete our bill later.

The Court: All right.

Mr. Coates: Note our exception.

Q. Mr. Lewis, the matters appearing on page 1 of the exhibit correctly reflect the records of these three commissions on which you made the audit, for the periods stated therein?

A. Page 1 is a statement showing the earnings from op-
[fol. 822] erations within the city limits of Laredo, and necessarily certain allocations have been made to the book figures in arriving at those shown in this exhibit.

Q. And with those allocations made the figures on that page correctly reflect the records?

A. In my opinion, they do.

Q. Now, turning first to the first classification of operating revenues, what does that item represent?

A. Operating revenues in its general terms includes all revenues of the Company from its operations.

Q. Gas, as well as——

A. From the sale of gas and reconnect charges, or any other operations they might have.

Q. That page 1 shows the operating revenues for what periods of time?

A. For the year ended June 30, 1929, the year ended June 30, 1930, the year ended June 30, 1931, the year ended July 31, 1932, and the year ended December 31, 1933.

Q. Now, I will ask you first what is the beginning of the corporate life of the South Texas Gas Company and the Texas Border Gas Company—isn't it April 28, 1928?

A. I am not sure that that is the date of the beginning of their corporate life; that is the date upon which they took over the old Border Gas Company.

Q. And this the first operating period beings June 30, 1928, doesn't it?

[fol. 823] A. Yes, sir.

Q. Within probably two months from the beginning of the existence of those two companies?

A. Well, the two companies took over the Border Gas Company on April 10th, and this statement starts on July 1st. That would be a little over two months.

Q. About two and a fraction months?

A. Yes, sir, a little over two months.

Q. And this period on down through to December 31, 1933?

A. That is the last period.

Q. Now, what are the operating revenues for the first period represented by the year—for the year ended June 30, 1929?

A. $290,807.62.

Q. And below you have listed the operating expenses during that same period?

A. Yes, sir.

Q. And below that the net return before depreciation and income taxes for the same period?

A. Yes, sir, that is correct.

Q. And you proceeded in that way for each of the periods appearing on that page?

A. Yes, sir.

Q. Now, for the year ended June 30, 1929, what does this net return show?

[fol. 824] A. The net return, before providing for depreciation and income taxes, is $149,452.24.

Q. And for the year ended June 30th, 1930?

A. $162,331.42.

Mr. Coates: It is understood our objection goes to all this?

The Court: Yes, sir.

Q. And for the year ended June 30, 1931.

A. $129,347—and, I believe that is sixty-six cents.

Q. Yes, sixty-six cents.

A. My copy isn't clear.

Q. Now, Mr. Lewis, the next period is for the year ended July 31, 1932. Why was the period ending July 31, 1932, chosen instead of just continuing the twelve month period?

A. At the time the case was——

Q. You mean the hearing before the Railroad Commission?

A. Yes. It was prepared for the hearing before the Commission, and that was the latest possible date that we could get the figures at that time.

Q. And that is why that period was chosen?

A. Yes.

Q. And that shows a net return for that period of how much?

A. $80,308.47.

Mr. Coates: Are you in each case referring to before depreciation and income tax?

[fol. 825] Mr. Lange: Yes, sir.

Q. And the last period covers the period of operations of the United Gas Public Service Company for the year ended December 31, 1933. Now, when was it that the United Gas Public Service Company took over these properties?

A. On October 31, 1932.

Q. And what does the net return for the last period show?

A. Before depreciation and income taxes, $65,524.16.

Q. Now, Mr. Lewis, please explain the supporting statement appearing on pages—beginning on page 2 of the exhibit,—what does the statement on page 2 reflect?

A. Page — reflects the total earnings of the South Texas Gas Company for the year ended June 30, 1929, making the operating revenues and expenses of the South Texas Gas Company and allocating them as between the other towns and Laredo, in the city and outside of the city, to arrive at the net figures included in the exhibit—page 1 of the exhibit.

Q. In other words, that sets forth the earnings of the South Texas alone, allocated to Laredo?

A. Yes.

Q. For the period ended June 30, 1929?

A. You will find a similar statement on page 6 of the exhibit for Texas Border Gas Company for the same period.

Q. And then on page 3 of the exhibit, does that reflect a statement of the earnings of the South Texas Gas Company [fol. 826] for the next period ended June 30, 1930?

A. Yes.

Q. Similarly, as the previous one?

A. That is correct.

Q. Where does the statement of the Texas Border Gas Company for the same period appear?

A. On page 7.

Q. And on page 4 of the exhibit, does that reflect a statement of the—an operating statement of the South Texas Gas Company for the year ended June 30, 1931?

A. That is correct.

Q. And the statement for the same period of the Texas Border Gas Company appears on page 8?

A. That is correct.

Q. And on page 5 of the exhibit, that reflects a statement

of the operations of the South Texas Gas Company for the year ended July 31, 1932?

A. Yes, sir.

Q. And of the Texas Border Gas Company for the same period the operations are reflected on page 9?

A. Yes, sir.

Q. Now, Mr. Lewis what do the items appearing on page 10 show?

A. Page 10 is a summary of items allocated to Laredo in the preceding exhibits upon which I was unable to make or I was unable to get detailed verification or items which in [fol. 827] rate controversies have been questioned as to their propriety in rate controversies, and I have included those items in my preceding items, and have set them out here for the information of anyone reading the exhibit.

Q. That is for reference to operations within the city limits of Laredo?

A. The amounts shown on page 10 over the net amounts allocated to the city of Laredo in the preceding exhibits.

Q. What do the figures on page 11 reflect?

A. Page 11 is in support of—pages 11 and 12 support the items summarized on page 10; page 11 showing in detail the questionable items in the operating statements of the South Texas Gas Company, the total and the amounts allocated to Laredo; and page 12 shows the same items contained in the Texas Border Gas Company's statements, both in total and the amount allocated to Laredo; pages 11 and 12 are summarized for convenience on page 10.

Mr. Lange: Have you the Exhibits 2 and 3 there?

The Court: Gentlemen, we will take a minute or two while they look for those papers.

(Recess.)

[fol. 828] Q. Mr. Lewis, turn to Exhibit 8, page 1, the item of Gas Purchases. Those were computed at the actual gas purchase figures as represented by the Company's books?

A. For each year.

Q. For each of the years? For the year 1929?

A. No.

Q. What adjustments did you make? Explain them.

A. Those first three periods—well, the first four periods show the gas at 5 cents a thousand cubic feet. During the first three periods, that is June 30, 1929, June 30, 1930, and

June 30, 1931, those purchases were entered on the Company books at 8 cents a thousand for industrial gas and 13 cents a thousand cubic feet for domestic gas; but there was an amended contract in December, 1929, amending the prior contract, that all gas billed from the South Texas Production Company was to be billed at 5 cents a thousand cubic feet; and while the Company continued billing under the old contract of 8 cents and 13 cents, their books were later adjusted to a basis of 5 cents a thousand cubic feet; so I adjusted the first three periods to 5 cents a thousand cubic feet. During the year ending July 31, 1932 the gas was actually billed at 5 cents, and that was the rate that I used. For the year ending December 31, 1933, I have set up the Gas Purchases at the actual purchase price, as shown by the books for the Laredo line, and have allocated to the city limits of Laredo the proportionate part of that total Gas Purchases for the Laredo line which the deliveries to the [fol. 829] City limits of Laredo bear to the total.

Q. In connection with the item Gas Purchases for the period ending December 31, 1933, do you know from what wells the gas was taken and flowed to Laredo during that period? Have you the names of the wells?

A. Yes, sir; I think I have. Do you want the names of the wells?

Q. Yes, and the volume of gas from each that flowed to Laredo.

A. I have here the analysis of Gas Purchases of gas delivered to the Laredo lines.

Q. By wells?

A. That gas is delivered into the Laredo lines and delivered to points along the lines—Aguilares, Oilton, Mirando City, and Laredo. For the year ended December 31, 1933, the gas delivered to the Laredo lines was purchased from—I will list them: The Southern Gas Utilities' A. C. de la Garza Number 1, pressure base 2 pounds 14.7, 76,878 M. C. F.; the Southern Gas Utilities Charles Webster Number 1, on a pressure base of 2 pounds 14.4, 35,154 M. C. F.; Snowden-McSweeney A. C. de la Garza Number 2, on a pressure base of 2 pounds 14.4, 70,079 M. C. F.; Foster-Barnsley A. C. de la Garza Number 2, on pressure base of 2 pounds 14.4, 69,843 M. C. F.

Q. That M. C. F. means thousand cubic feet?

A. Yes, sir. George S. Marshall's Charles Webster Num-

ber 1, on pressure base of 2 pounds 14.4, 54,865 M. C. F.; Associated Oil Company's Charles Webster F-1, on pressure [fol. 830] base of 2 pounds 14.4, 53,783 M. C. F.; Washington, Texas, Oil Company's Foster Barnsley Number 1, on pressure base of 2 pounds 14.4, 58,804 M. C. F.; E. A. Sterling A. C. de la Garza No. 1, at 2 pounds 14.7, 56,540 M. C. F.; E. A. Sterling Company, Inc. A. C. de la Garza Number 2, on a pressure base of 2 pounds 14.7, 24,418 M. C. F.; Then there was delivered at Pescadito Junction from the Jennings-Pescadito transmission line on a pressure base of 2 pounds 14.7, 27,431 M. C. F. That is the total gas delivered to the Laredo lines as per the Company's invoices.

Q. Did that include the well known as the Jennings Number 10?

A. The Jennings No. 10 deliveries would not be directly to the Laredo line.

Q. Have you the total that was taken into the line from the Jennings No. 10 for the twelve months period ending December 31, 1933?

A. Jennings No. 10 was delivered to the Monterrey line—Monterrey line is the term used on the Company's books—on a pressure base of 2 pounds 14.4, there was delivered 428,513 M. C. F.

Q. That is a company owned well, isn't it—an affiliated company owned well?

A. That gas from the Jennings No. 10 was purchased from the United Production Corporation; I suppose they own the well.

Q. At what price?

A. At 4 cents per thousand.

[fol. 831] Q. And how much of that gas flowed towards Laredo?

A. I couldn't say how much of that particular gas. There was delivered from the Monterrey lines to the Laredo lines at Pescadito Junction 27,431 M. C. F. That gas might have come from the Jennings No. 10 or it might have come from some other well in the Jennings area.

Q. Mr. Lewis, in your statement of Operating Expenses, as they appear on page 1 of the Exhibit, have you included any operating charge for pipe line rental?

A. I have not.

Q. Why? Explain why you have not included in that item and allocated any part of it to Laredo as an Operating Expense?

A. That pipe line rental is——

Q. Where is that pipe line located?

A. According to my understanding the pipe line rental is paid to the Southern Gas Company on this section of line from Jennings Junction to Jim Hogg Junction, and from analysis of the gas purchases and deliveries for the year, there was sufficient gas produced from the west side of the Junction that made it unnecessary for any gas to flow through that line——

. . . . . .

[fol. 832] Q. Mr. Lewis, have you included in the Operating Expenses reflected on page 1 for any of the periods any item of gathering charge?

Mr. Coates: Page 1 of what?

Q. Of this same Exhibit 8.

A. I have included in this exhibit portions of gathering field expenses, but I have not included any part of the one cent gathering charge paid to the Southern Gas Company in the Carolina-Tex. field.

Q. Why?

A. That gathering charge—there are several reasons why I didn't include it. In the first instance, that gathering charge did not go into effect, either directly or indirectly, until after the Monterrey or the Jennings-Roma line was built, so that it appeared that at least one of the reasons why that gathering charge was necessary was so that the gas that had formerly been going to Laredo might go down the Mexico line, so that I considered that charge of one cent——

Mr. Coates: We object to an accountant testifying with respect to matters of operation.

[fol. 833] The Court: He is simply telling his reasons why he didn't put the one cent in there.

Mr. Coates: And we object to it further because this testimony in this case is for the purpose apparently of impeaching the Commission's order, on which these plaintiffs are suing; and at this time, the defendant objects and excepts to any evidence, or any efforts by the plaintiffs, tending or seeking to vary the findings made by the Commission in its opinion or order, or to impeach, vary, repudi-

ate, or escape from the findings there made by the Commission, for the following reasons: It is an effort to repudiate and impeach the official acts of the Commission, which the plaintiffs are here seeking to enforce. Two, the legal representatives of the Commission, the Commission, and all plaintiffs herein, are bound by the Commission's findings and orders, which they cannot now seek to set aside, but must seek to enforce, because in their pleadings the plaintiffs have set up the order of the Commission as the basis for their suit, alleging its justness and fairness, and declaring on it as the basis for their suit, and making it a part of, and have incorporated it in their petition, and have therefore admitted the correctness and fairness of what they now seek to vary, repudiate, impeach, or escape from, and their admission is binding on them and is a judicial admission. For the further reason that they have waived any right to impeach, repudiate, vary, or escape [fol. 834] from any finding of the Commission in its efforts to enforce it here. For the further reason that they are estopped by their efforts and allegations concerning it, and their declaration on it, from impeaching, varying, repudiating, or escaping the opinion and order, or any specific finding or part thereof. We object to this testimony for each and all of the above reasons.

The Court: The objections are overruled.

Mr. Coates: Note our exception.

Q. Go ahead and make your complete statement.

A. I have forgotten what I said.

Q. The Reporter will read it to you.

(Thereupon the Reporter read the witness's answer as follows: "A. That gathering charge—there are several reasons why I didn't include it. In the first instance, that gathering charge did not go into effect, either directly or indirectly, until after the Monterrey or the Jennings-Roma line was built, so that it appeared that at least one of the reasons why that gathering charge was necessary was so that the gas that had formerly been going to Laredo might go down the Mexico line, so that I considered that charge of one cent——")

A. —was brought about, at least partially by the construction of the Jennings-Roma line.

Mr. Coates: It is understood our objection goes to all this testimony?

The Court: Yes, sir.

A. Another reason that I excluded the gathering charge in all my exhibits is that the contract under which it is [fol. 835] charged was made with an affiliated company, and was therefore subject to some question.

Mr. Coates: We object to that further because it is a legal conclusion of this accounting question.

A. He asked me for my reasons why I got it out.

The Court: You are giving the reasons that occur to your mind; you are not trying to state legal reasons?

A. No, sir.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

A. There were also some other facts in connection with that which made me somewhat doubt- whether or not it was a proper charge. For sometime after the contract was entered into between the South Texas Gas Company and the Southern Gas Company, providing for gas deliveries at 5 cents on the South Texas controlled wells, and 6 cents on some others, the Southern Gas Company billed gas direct to the South Texas Gas Company at either 5 or 6 cents per thousand cubic feet. At the same time the South Texas Production Company, another affiliated company, was billing gas in the same field at 8 cents and 13 cents per thousand cubic feet. After the South Texas Southern Gas Company contract providing for 5 and 6 cent gas came into effect, the Southern Gas Company delivers, and the South Texas Gas Company were billed direct at 5 and 6 cents, until February, 1931, when the South Texas [fol. 836] Gas Company was transferred from the Laredo Division to the San Antonio for accounting purposes. Beginning at that time, the Southern Gas Company stopped billing gas direct to the South Texas Gas Company, and began billing it through the South Texas Production Company at increased rates up to 8 cents per thousand cubic feet, and in addition to that, charged the one cent gathering charge. All of those circumstances influenced me in

eliminating the gathering charge. There was also a clause in the Southern Gas Company-South Texas Gas Company contract which caused me to make the elimination, and that was the paragraph that provides that the South Texas Gas Company should pay the operating costs of the transmission lines belonging to the Southern Gas Company, which it was using.

Mr. Coates: Transmission?

A. The gathering lines. If I remember correctly, it has been a long time since I have seen that contract. It has been introduced here, hasn't it?

Mr. Bobbitt: Yes, sir, that is the contract we have asked for, and which I understood they were going to furnish.

A. I believe it was introduced yesterday. Let me see a copy of it.

Mr. Coates: There has been one copy introduced.

A. I haven't seen a copy of it in two or three years, Mr. Coates.

[fol. 837] Mr. Lange: A photostatic copy was introduced.

Mr. Coates: That was introduced and marked as Defendant's Exhibit 7, and two copies of it furnished to counsel for the plaintiff.

Mr. Bobbitt: That is the six-cent contract he has. Where is the other contract, which Mr. Stein——

A. It is all covered by the same contract.

Q. Is this the contract and paragraph? (Counsel hands document to witness.)

A. Let's see. I had a copy of it, but I haven't seen it for a good long while. Paragraph 3 of this contract recites that "South Texas shall operate said gathering system and pay all the cost of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system". But my interpretation of this contract, if I may state it——

Mr. Coates: All right; the same objection.

A. ——is that South Texas shall pay the operating costs.

The Court: Wait just a moment. I think you have gone far enough to show that you didn't include that one-cent, because of that paragraph you have now read.

A. That is one paragraph. It states that the South Texas Company shall pay the costs of the gathering lines.

[fol. 838] Mr. Coates: And that the Southern shall pay the——

A. Shall pay the maintenance costs.

Mr. Bobbitt: Any other reasons?

A. That's all I can recall at the present.

The Court: Now, as I understand, you have given a number of reasons why you didn't include that one-cent gathering charge in the cost of gas to the Laredo line.

A. The one-cent gathering charge?

The Court: The one-cent gathering charge. And the exhibit which you have made and introduced here showing the cost of gas purchased does not include that one-cent gathering charge?

A. It does not.

Q. Mr. Lewis, in reference to——

Mr. Coates: We move to strike this testimony at this time, for each and all of the reasons for which it has been objected to, and because by this witness explaining and giving his reasons, some of which we believe are legal conclusions, he is getting into the record by indirection, as his reasons, legal conclusions as evidence before the jury.

The Court: The motion is overruled.

Mr. Coates: Note our exception.

Q. Mr. Lewis, in connection with the defendant's Exhibit [fol. 839] 3, prepared by Mr. Womack, I will ask you whether you made any comparisons as to operating expenses for the two years as to an increase or a decrease? Is that a memorandum of your comparison? (Handing paper to witness.)

Mr. Coates: What is he comparing?

Mr. Lange: The operating expenses reflected in Womack's Exhibit 3.

A. Yes, I made such comparison.

Q. As decreasing or increasing, please explain the comparison you made.

A. In comparing the defendant's Exhibit 4 for the year ended July 31, 1932, and Exhibit 3 for the year ended December 31, 1933, I have made the following comparisons: Production Expenses $26,638.70—that is for the year ended July 31, 1932.

Q. Where does that appear in the defendant's exhibit?

A. It is on page 1 of Defendant's Exhibit—I don't have Exhibit 4. It is page 1 of the July, 1932, section of Exhibit 4. (Counsel hands document to witness.)

Mr. Lange: Does the Court have those two?

The Court: I believe that I have. That will be on page 3 of——

A. Page 3 of the July 31, 1932, section of the exhibit. There are several sections to the exhibit.

The Court: Yes.

[fol. 840] A. I will start again with my comparison. Production expenses: for the year ended July 31, 1932, was $26,638.70; for the year ended December 31, 1933, $21,111.61; or a decrease of $5,027.09. Transmission expenses: for the year ended July 31, 1932, $12,557.80; for the year ended December 31, 1933, $10,131.28; or a decrease of $2,426.52. Distribution expenses: for the year ended July 31, 1932, $21,309.93; for the year ended December 31, 1933, $13,978.32; or a decrease of $7,331.61. Utilization expenses: for the year ended July 31, 1932, $462.83; for the year ended December 31, 1933, $7.91; or a decrease of $355.92. Customers expenses: $16,071.76 for the year ended July 31, 1932; and for the year ended December 31, 1933, $14,136.54; or a decrease of $1,935.22. New Business expenses: $6,790.34 for the year ended July 31, 1932; for the year ended December 31, 1933, $6,077.61; or a decrease of $712.73. General expenses: for the year ended July 31, 1932, $30,069.66; for the year ended December 31, 1933, $39,456.00; or an increase of $9,386.34. Taxes: for the year ended July 31, 1932, $13,513.60; for the year ended December 31, 1933, $14,921.77; or an increase of $1,408.17. Expressed in percentage of increase—that is, using July 31, 1933, figures as [fols. 841-850a] a hundred per cent, the percentage of increase or decrease in these items is as follows: Production

expenses, decrease: 20.75 per cent. Transmission expenses, decrease: 19.32 per cent. Districution expenses, decrease: 34.40 per cent. Utilization expenses, decrease: 76.68 per cent. Customers expenses, decrease: 12.04 per cent. New Business expenses, decrease: 10.42 per cent. General expenses, increase: 31.22 per cent. Taxes, increase: 10.42 per cent.

Mr. Coates: What is your figures for Utilization, again?

A. 76.68 per cent.

Q. As a further comparison, Mr. Lewis, during these two periods,—the period ending July 31, 1932, as compared with the period ending December 31, 1933, which period shows the highest revenues?

A. The year ended July 31, 1932.

Q. Does that same period reflect the highest or the lowest—or a lower general expense?

A. General expenses increased; for the year ended December 31, 1933, over the year ended July 31, 1932, general expenses increased 31.22 per cent.

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[fol. 850b] [File endorsements omitted]

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[fol. 851] Morning Session

Friday, March 16, 1934, 10:00 A. M.

Leon O. Lewis, Jr., a witness for the Plaintiff, resumed the stand, and testified:

Direct examination.

Questions by Mr. Lange:

Q. Now, Mr. Lewis, turn to Plaintiff's Exhibit 8, page 1, with reference to the item of gas sales under operating revenues. I will ask you whether you have the total in M. C. F. of gas that was taken inside the City of Laredo for the several periods represented on that page?

Mr. Coates: It is understood that our objection goes to the exhibit and all the testimony for the years other than those for which the rate here is made effective.

A. Yes, I have those.

Q. Will you give it to us in the various classifications, as to meters and then as to industrial and residential and commercial?

A. You want only inside the City of Laredo sales?

Q. That's right.

A. I will give you first the year ended December 31, 1933.

Q. All right.

A. I will have to make some computations as I go along. I have the total meters read for the year, and so I will have [fol. 852] to make a computation each time to get the average number.

Q. If it will take you any considerable period of time——

A. The way I have my papers set up, I have the total meters read and in each instance I will have to divide that figure by 12 to get the average for the year. I can give you the volumes and the revenues now and compute the number of meters later, if you like.

Q. Do that.

A. For the year ended December 31, 1933, within the City limits of Laredo, residential volume was 155,018 M. C. F.; revenues, $110,695.85. Commercial volume, 50,098 M. C. F.; revenues, $25,914.25. Industrial volume, 99,825 M. C. F.; and revenue, $18,464.13. Government and municipal volume, 3998 M. C. F.; revenue, $2,071.03. Public utility for fuel, 136 M. C. F.; revenue, $54.40.

Q. That is for the year ending December 31, 1933?

A. Yes. For the year ended July 31, 1932: Residential volume, 170,797 M. C. F.; revenue, $122,857.90. Commercial volume, 71,167 M. C. F.; revenue, $33,407.69. Government and municipal volume, 4303 M. C. F.; revenue, $2,257.42. Industrial volume, 92,335 M. C. F.; revenue, $18,424.02. Public utility for fuel, 76,715 M. C. F.; revenue $15,353.30.

Q. That is for the year ended July 31, 1932?

A. Yes, and then there is affiliated companies, 244 M. C. F., revenue $48.80. For the year ended June 30, 1931, residential sales were 191,051 M. C. F.; revenue, $130,590.57. [fol. 853] Commercial volume 92,703 M. C. F., revenue $38,846.79. Government and municipal volume, 4560 M. C. F., revenue, $2,208.68. Industrial volume, 370,132 M. C. F., revenue, $74,325.69. Affiliated companies, volume 40,902 M. C. F., revenue, $8,180.40.

Q. And that is the period ended June 30, 1931?

A. Yes.

Mr. Coates: Now, was that classification that you have given, in effect throughout that year?

A. There was a change in classification, I believe, at about November 1, 1930, wherein some meters that had formerly been included in a domestic classification were segregated and some were put in residential and some in government and municipal classification.

Mr. Coates: And were those meters classified as domestic—do they show in these figures you have given here, as residential?

A. They do. For the year ended June 30, 1930, at that time there was a different classification to the periods I have named before. Domestic volume, 211502 M. C. F., revenue $142,910.08. Semi-industrial volume, 82,663 M. C. F., revenue, $33,004.08. Industrial volume was 662,245 M. C. F., revenue, $130,271.27. Affiliated companies volume, 66,439 M. C. F., revenue was $13,287.80.

Q. And that is for the period ended June 30, 1930?

A. That is correct. For the year ended June 30, 1929: Domestic volume was 195,741 M. C. F.; revenue, $132,-[fol. 854] 251.07. Semi-industrial volume, 89,087 M. C. F.; revenue, $36,584.26. Industrial volume, 566,983 M. C. F.; revenue, $107,916.84. Affiliated companies, and that classification was run from January to June, 1929, or the sales are only for that period, volume, 22,844 M. C. F.; revenue, $4,568.87.

Q. That is for the period ended June 30, 1929?

A. Yes. Now, the periods ended June 30, 1929-1930 and 1931, the figures I have given are net, and do not include forfeited discounts, while for the years ended July 31, 1932, and December 31, 1933, the revenues I have given do include forfeited discounts.

Q. Explain that item of forfeited discounts?

A. That is the amount that is added to the net bill if it is not paid at a particular date.

Q. Do you know the per cent discount involved in that; is it ten percent?

A. The net bill, as I understand it, is 67½ cents per thousand cubic feet, and if it is not paid by a specified date, the amount is increased to 75 cents.

Q. And the discount is 10 per cent of 75 cents?

A. Well, 7½ cents is 10 per cent of 75 cents; that is correct.

Q. Mr. Lewis, in connection with the preparation of this exhibit reflected on page 1, you state this is a consolidated statement of earnings from operations within the City Limits of Laredo. I will ask you whether in preparing that statement, it was necessary for you to make certain alloca-
[fol. 855] tions out of the whole property to segregate the operations within the city limits of Laredo?

A. Yes, the Texas Border Gas Company distributes gas not only in the city of Laredo—or did distribute gas not only within the city limits of Laredo, but a number of other towns in that district.

Q. You might mention right there, what distribution systems besides the one in the city of Laredo were operated by the Texas Border Gas Company during these periods.

A. The distribution systems at Hebbronville, Bruni, Mirando City, Oilton, Aguilares and from about January 1, 1930, at Roma.

Q. All right; proceed.

A. For the first four periods shown on the statement, the Texas Border Gas Company operated the distribution systems in those towns named, and the operating revenues and expenses were contained in one set of accounts. There was no allocation made on the books, as between towns. In segregating the revenues, I was able to do that exactly, because the records of the company reflected the point at which the sales were made, but in connection with the operating expenses, it was necessary to make certain allocations as between Laredo and the other towns in the district, and then too, there were some sales within the Laredo city gate which are made outside the city limits of Laredo.

Q. Where are they made to?

A. I am not sure as to the definite location of those
[fol. 856] sales. I was supplied with a list of the meters which were located outside of the city limits.

Q. Do you have that list among your papers?

A. I have it somewhere; I don't know whether I have here with me or not.

Q. Well, among those on the list, I will ask you whether there is not one supply that goes through the city gate of Laredo and is measured at the Nuevo Laredo gate into Nuevo Laredo?

A. There are two meters, I believe, measuring gas on the north side of the river for sale to the Nuevo Laredo Gas Company.

Q. And that gas goes into Nuevo Laredo, Mexico?

A. Yes.

Q. Now, is there any gas that goes through the Laredo distribution system into Fort MacIntosh?

A. There is.

Q. Is there any gas that goes through the distribution system into the lines known as the North River line, along the Rio Grande River?

A. I believe that is the way the line is designated, and another line also, known as the South River line.

Q. Yes, and each of which lines has a meter connected to it, serving consumers outside the city and along those lines?

A. That is correct.

Q. Then the gas that goes to those consumers residing in Carlton Gardens, passes through the Laredo distribution system, does it not.

[fol. 857] A. All the sales made in the Laredo town plant, and I will use that term to designate both inside and outside the city of Laredo on the distribution system, pass through the Laredo city gate except for small deliveries which are made from the transmission line before the gas reaches the city gate; but except for that small amount of gas, all gas sold there in the city of Laredo or outside the city limits on the Laredo distribution system, passes through the Laredo city gate meter.

Q. And there is also a meter that serves the smelter situated outside the city of Laredo?

A. Yes.

Q. The Timonox Refinery, I believe it is.

A. Yes.

Q. Now, will you explain the method of allocation followed by you in connection with the distribution properties, Mr. Lewis?

A. The distribution system operating expenses, or the distribution system operations, distribution system maintenance and customers expenses, have been allocated on the basis of the average number of meters served for the twelve months periods indicated.

Q. Why did you use that method of allocation, Mr. Lewis?

A. I used that method of allocation because I considered it fair both to the company and to the city of Laredo, and that method applies to each meter the same per meter cost of those expenses for each year. That is on the theory

that the distribution system operations, maintenance ex-
[fol. 858] pense and customers expense is proportional to the number of meters served.

Q. And you believe, in the light of your experience that that is the fairest way in your opinion to make that allocation?

A. Yes, I think that is fair. I don't know that it would be the fairest—there are a number of ways that the items might be allocated.

Q. You do not have available the demand load factor in this case, do you?

A. No, sir.

Q. And for that reason you could not apply that method, without the facts and figures available to support that method?

A. I will say this for that method of allocation: if you start considering load factor and demand and those items, you will get into a lot of complications, and I don't know, when I was finished whether it would be perfectly clear to me; and this method, while I consider it fair, is a simple method of allocation.

Q. And you pursued that in connection with the allocation of the operating items affecting the distribution system in the city of Laredo?

A. Yes, the items that I have mentioned.

Q. Those you have mentioned. What method of allocation did you pursue with reference to any of the other operating items affecting the distribution system in the city of Laredo?

A. The new business expense was allocated to the city of Laredo on the basis of gross revenues.

[fol. 859] Q. Now, explain how you proceeded on that?

A. Well, I charged to the city limits of Laredo, the proportional part—and I am speaking of the first four periods shown on the exhibit now.

Q. That is, 1929, 1930, 1931 and July 31, 1932?

A. Yes.

Mr. Coates: This does not apply to the calendar year of 1933?

A. The first item we discussed does—that is, the meter basis, and the same method is pursued in connection with new business expense, except that for the first four years, I took the total new business expense of the Texas Border

Gas Company, and allocated that proportionate part to the City Limits of Laredo which the gross revenues in the city of Laredo bear to the total gross revenues of the company. For the year ended December 31, 1933, the district new business expense of the Laredo district of United Gas Public Service Company is allocated on the basis of gross revenues. That is, the city of Laredo is charged with that proportionate part of the district new business expense which the city of Laredo's gross revenues bear to the total gross revenues of the Laredo district.

Q. Now, did you apply that method to any other item of operating expenses in the city of Laredo distribution system?

A. General expenses for the first four periods named, the years ended June 30, 1929-1930 and 1931, and the year ended July 31, 1932, are allocated on the basis of gross [fol. 860] revenues, taking the total general expense of the Texas Border Gas Company, and allocating to the city of Laredo that proportionate part of the total which the gross revenues within the City of Laredo bear to the gross revenues of the company.

For the year ended December 31, 1933, the district general expenses of the Laredo district of United Gas Public Service Company are allocated on the basis of gross revenues, that is, the city of Laredo is charged with the proportionate part of the district general expense which the total revenues or gross revenues within the city of Laredo bear to the total gross revenues for the district.

The general office and general expense of the Houston office was allocated—Well, starting with the general office, the total general office and general expenses of the general office was first allocated to the Laredo district. The first allocation was to segregate that total as between the production, transmission and distribution departments. For that segregation, I used the same percentages that the company has indicated in their manual; I have not examined Exhibit A, but I think it is the same percentages.

Mr. Coates: You are referring to Defendant's Exhibit 2, I believe it is?

A. Was it Exhibit 2? Anyway, in the Houston offices, I discussed at length with the employees and officials of the company, their methods of allocation of expense, and undertook to use, for the allocation between production,

[fol. 861] transmission and distribution system departments, the same method of allocation that they have used. The part of that which was allocated to distribution system, I have allocated to the Laredo district on the basis of gross revenues, operating expenses and number of customers, given equal weight in the percentage to each of the three items mentioned. The allocation from the Laredo district to the city limits of Laredo I have allocated on the basis of revenues and number of meters.

Q. Does that comprise all the allocations that you have made, affecting the operating expenses in the city of Laredo—the distribution system operating expenses?

A. No, there is distribution system taxes.

Q. How did you allocate those?

A. I did not make an analysis of the tax account. The taxes are all carried on the general office books in Houston, and an analysis of that account for the entire United Gas Public Service Company entailed quite a bit of time, and I have taken the company's analysis of the tax account, and those items of ad valorem taxes as specifically applied to the South Texas area I have divided between the distribution system and the transmission system properties. In other words, I took the taxes paid on the old Texas Border Gas Company properties and allocated them on a number of bases.

Mr. Coates: Does this apply to all periods, Mr. Lewis?

A. Yes. There might have been some minor change, but the general theory and principle is the same. The ad [fol. 862] valorem taxes on the old Texas Border Gas Company properties include taxes paid in Jim Hogg County, none of which have I allocated to the City of Laredo; the Hebbronville Independent School District taxes have not been allocated to the city of Laredo. Starr County taxes were not allocated to the city of Laredo.

The taxes for Webb County were allocated to the city of Laredo on the basis of the number of meters in Webb County. That is, taking the number of meters in the city limits of Laredo, and the total number of meters and distribution systems in Webb County, and I have allocated to Laredo that proportion. The City of Laredo taxes I allocated on the basis of the number of meters inside the city and outside the city, allocating to the city of Laredo 96.39 per cent of the City of Laredo Taxes, and outside of the city limits of Laredo, 3.61 per cent of the city of Laredo

taxes. The taxes paid in Mirando City have not been allocated to Laredo.

In connection with the general taxes of the distribution system, I have taken the company's analysis of general taxes paid and have used their method of allocation as between the transmission and distribution system properties. The general taxes, franchise taxes in Delaware, the first allocation is to allocate to the Texas properties, 17 per cent to the Texas transmission properties and 16.5 per cent to the Texas distribution properties.

Mr. Coates: Now then, do you mean all properties in the state of Texas?

[fol. 863] A. Yes, all properties in the State of Texas. The federal check tax and capital stock taxes have been allocated as between Texas transmission and distribution system properties on the same basis. Then, the allocation of the distribution system taxes was made to the Laredo district on the basis of—Well, Texas distribution system taxes were allocated to Laredo on the basis of the revenues, direct expenses and number of meters in Texas, and the Laredo district was allocated to the city of Laredo on the basis of revenues and number of meters.

Mr. Coates: Pardon me, Mr. Lewis, but have you mentioned Texas franchise taxes?

A. No, I haven't yet. The Texas franchise tax was allocated first to the transmission and distribution system properties, 48 per cent to transmission system properties, and 46.4 per cent to distribution system properties. Then, that part allocated to distribution system properties, was allocated to the Laredo district on the same basis as the general taxes—that is, revenues, expenses and number of customers, and the Laredo district taxes, Texas franchise, was allocated to the city of Laredo on the basis of revenue and meters.

Mr. Coates: Excuse me, Mr. Lewis—I am not breaking in for the purpose of disconcerting the witness, but so we'll not have this disconnected in the record. Do you mind giving, if counsel permits it, what is your basis of this first allocation of 48 per cent to transmission system and 46.4 per cent to distribution system properties?

[fol. 864] A. That is the percentages that the company advised me they were using in their allocations on the general books.

Mr. Coates: Do you know what representative of the company so advised you?

A. That is based on direct expenses, the pipe lines 48 per cent and distribution 46.4 per cent. I have not checked that percentage; that is the one I was given.

Mr. Coates: Do you remember who gave it to you?

A. I think I got that from Mr. Womack. You understand in that connection, I could not take the time to go through the entire United Gas Public Service Company properties, and on items of this nature, I had to rely on statistical information furnished to me.

Q. All right, proceed with your explanation.

A. The gross receipts taxes was not allocated, but was computed on the basis of gross receipts tax rates on the gas sold in the city of Laredo, after allowance for charged off accounts. I believe that is all of the taxes of the distribution system.

Q. Now, are there any other distribution system allocations?

A. No, I think that is all of the distribution system.

Q. Then proceed to the transmission system, and give us the allocations you have made.

A. I might explain here, before I proceed any further with my explanation, that those last general tax figures I gave, the discussion of ad valorem taxes will hold throughout the entire five year period, but due to the reorganiza- [fol. 865] tion in October, 1932, the allocation of general taxes will not hold throughout the five year period, for the reason that the year ended December 31, 1933, is the only period shown here wherein those general taxes were carried on the United Gas Public Service Company books; heretofore those general taxes were carried on the books of the Texas Border Gas Company, and allocations were made in much the same manner, except I did not have to start with the total of the United Gas Public Service Company.

Q. And that set up did not appear on the books with reference to the United Gas Public Service Company until beginning with October, 1932?

A. Well, these properties were transferred to the United Gas Public Service Company at that date.

Q. And is it from that period on that the matter of these various districts came into existence, or did they have those before?

A. Those districts were there before that transfer. The Texas Border Gas Company was in district 40 and the South Texas Gas Company was in district 70, prior to the transfer of the properties to the United Gas Public Service Company.

Q. Now, give us the methods you pursued with reference to allocating the transmission system operating expenses of the transmission properties serving Laredo.

A. Gas purchases are allocated direct to the city of Laredo; that is, taking the gas deliveries to the Laredo line, and allocating to the city limits of Laredo that proportionate part which the volume bears to the total volume [fol. 866] delivered to the line, so that gas purchases is really not an allocated figure.

Q. That is a direct charge?

A. It is an actual figure. Transmission system operations and maintenance for the first four periods shown are allocated on the basis of volume delivered by the transmission system.

Q. Just in connection with that, Mr. Lewis, please explain how that operates?

A. The theory is in burdening each thousand cubic feet of gas transported with the same unit transportation cost and maintenance, or spreading the total cost of transporting gas and maintaining the lines to the various units transported.

Q. Do you think the use of that method is a fair method of allocation to both the company and the city?

A. Yes, I think it is a fair method of allocation, because my study of the South Texas area indicated that there was a closer relationship between the volumes of gas delivered and the transmission system operating expenses than any other two known factors that I could find, and the relationship between those two was very close.

Q. Now, are there any other factors——

A. In connection with those two items, I had not given my allocation for the year ended December 31, 1933.

Q. All right; do that, then.

A. Transmission system operating expense was allocated on the basis of the transmission system operating expenses of district 70, and the South Texas Gas Company for the [fol. 867] last year that they were separated; in other words, The South Texas Gas Company, upon the transfer

of the properties, was placed in District 70 of United Gas Public Service Company. Prior to that time, District 70 existed, so that I took the operating expenses of South Texas Gas Company for the year ended October 31, 1932, and the operating expenses of district 70 for the same period of United Gas Public Service Company, and found the total transmission system operating expenses of the now District 70, for the year ended October 31, 1932, exclusive of pipe line rental, to be $34,197.38. Of that amount, the South Texas Gas Company was $16,020.22, or 46.84 per cent of the total. District 70 of the United Gas Public Service Company, transmission operating expense for the year ended October 31, 1932, was $18,177.16, or 53.16 per cent of the total. I have allocated the transmission system operating expense for the year ended December 31, 1933 to the South Texas area, and when I say the South Texas area, I mean the old South Texas Gas Company system, on that basis, allocating 46.84 per cent of District 70 expense to the South Texas area. Then, the portion allocated to the South Texas area has been allocated to the City of Laredo on the basis of volumes of gas delivered.

Q. What other transmission system operation allocations did you make, Mr. Lewis?

Mr. Coates: I beg your pardon—is that both transmission system operations and maintenance to which you have been referring?

[fol. 868] A. That is just transmission system operations. The transmission system maintenance has been allocated on the same basis. For the year ended October 31, 1932, the South Texas Gas Company's transmission system maintenance expense was $10,335.17. The transmission system maintenance expense of District 70 of the United Gas Public Service Company was $15,779.55, or the total for the now District 70 was $26,114.72. The South Texas Gas Company's portion is 39.58 per cent of that total, and the District 70 of the United Gas Public Service Company is 60.42 per cent of that total, so that for the year ended December 31, 1933, I have allocated to the South Texas area 39.58 per cent of the District 70 transmission maintenance expense. Of that part allocated to the South Texas area, I have allocated a part to the City of Laredo, upon the basis of the volumes of gas delivered.

Q. That concludes all allocations you made with reference to transmission operating expenses?

A. No, there is the geenral expense of the transmission system, which for the years ended June 30, 1929, June 30, 1930, June 30, 1931 and July 31, 1932, have been allocated on the basis of gross revenues, allocating to Laredo the proportionate part of the South Texas Gas Company general expense which the gross revenues from gas deliveries for the city of Laredo bear to the total revenues from gas deliveries for the South Texas Gas Company. For the year ended December 31, 1933, the district general expense has [fol. 869] been allocated on the basis of proportion of the lineal miles and three inch equivalent miles, giving each item equal weight in the allocation percentage. The general expense of the general office in Houston for the year ended December 31, 1933, has been allocated, first by taking the total general office expense, and allocating it as between transmission, distribution and production departments, as stated in connection with the distribution system expense. Then, taking that part of the general expense relating to transmission properties, I have allocated the total transmission general expense to the South Texas area on the basis of lineal and three inch equivalent pipe, and have allocated to the City of Laredo, from the South Texas area, upon the same basis.

[fol. 870] Q. It is your opinion that that method of allocation is fair to both the company and the City. Explain why you have used it.

A. I had to deviate from my general expense allocation for prior years for the reason that the old South Texas Gas Company was transferred to the United Gas Public Service Company and at that time the gas was no longer billed to the city gate stations, so that the only — reflected in the transmission district under the present set-up is the gas sold at Roma for delivery to Monterrey and some miscellaneous pipe line sales of small amounts, so that I could no longer use the allocation factor that I had used in prior years. In allocating the general office expense down I could not study the entire United Gas system, but have used the basis adopted by the company for that allocation.

Q. Now, you have explained the methods of allocation that you have used, both in connection with distribution system operating expenses and transmission system operating expenses?

A. I believe I have given all except taxes.

Q. Well, give us those.

A. For the first four years shown in this period—I will take the last year first, the year ended December 31, 1933. In connection with ad valorem taxes of the old South Texas Gas Company properties the following ad valorem taxes [fol. 871] were paid: To Duval County, $62.98, of which I allocated no part to the city of Laredo. Benavides school district taxes, $18.15, have not been allocated to the city of Laredo.

Q. Why?—give your reasons.

A. Because the transmission system serving Laredo does not pass through those taxation districts.

Q. All right.

A. Jim Hogg County and Hebbronville independent school district have not been allocated to Laredo.

Q. Why?

A. For the same reason. Starr County was not allocated to Laredo.

Q. For the same reason?

A. For the same reason. Starr County independent school district has not been allocated to Laredo. Webb County taxes have been allocated to the gas deliveries in Webb County on the basis of volume deliveries. Mirando independent school district taxes have not been allocated to Laredo. The city of Laredo taxes have been allocated as between inside the city limits and outside the city limits on the basis of volume deliveries. Zapata County taxes have not been allocated to the city of Laredo.

The Court: What county is that?

A. Zapata. The general taxes first were split as between the various departments as explained a few moments ago, and the transmission part of the general taxes has been [fol. 872] allocated on the basis of lineal and three inch equivalent miles until it reaches the Laredo sector and from there on on the basis of volume deliveries.

Q. Why do you make those two allocations in that connection?

A. That is the basis that I used for distributing general office general expenses, and these general taxes are in the nature of general expenses, and I used the same method of allocation.

Q. Does that cover all allocations made by you as to the operating expenses of both transmission and distribution systems?

A. In connection with taxes I gave my method for the year ended December 31, 1933. For the four preceding years shown on Exhibit 8, page 1, I used the same method of allocation for ad valorem taxes, or substantially the same method; there might be some minor changes, and for the general taxes in those four periods I used the basis of gross revenues.

Q. Why did you use that basis for the four years?

A. You mean in connection with general taxes?

Q. Yes.

A. That is the basis I allocated general expenses during the four year period.

Q. Now, Mr. Lewis, in reference to the total M. C. F. that you gave us a while ago as deliveries within the city limits, have you the total M. C. F. deliveries of gas for the period [fol. 873] ending December 31, 1933, that were delivered from the Roma line to Monterrey?

A. Yes. You want the deliveries at the Roma check meter?

Q. Yes.

A. There was delivered at Roma to the Cia Mexicana de gas on the pressure base of two pounds 14.4 1,806,640 M. C. F., and there was delivered to another Mexican company that I can't pronounce——

Q. Just spell it.

A. Cia Explotodora de Hidrocarburos—delivered on the pressure base of ten ounces 14.4 15,895 M. C. F. Do you want——

Q. Both of the companies you just mentioned are situated within the Republic of Mexico?

A. The first one is. The second one I would presume by its name is. I don't know the exact locations.

Q. What did you say when I interrupted you?

A. Do you want the deliveries to the Roma city border station?

Q. Yes.

A. There was delivered at the city border station at Roma 1,546 M. C. F. on a pressure base of two pounds 14.7.

Q. That is during the twelve month period ending December 31, 1933?

A. Yes, sir.

Q. Can you give us the wells from which that gas originated?

A. You want the total deliveries of gas to the Monterrey line and the Jennings-Roma line?

Q. Have you got it separately?

[fol. 874] A. I have the gas deliveries to the Monterrey line as termed on the company books.

Q. Give us that first?

A. Do you want the deliveries by wells?

Q. Yes.

A. And the volume from each well?

Q. Yes.

A. The United Production Corporation's J. D. Jennings No. 2 on a pressure base of two pounds 14.4, 23,502 M. C. F. United Production Corporation's J. D. Jennings No. 4 on a pressure base of two pounds 14.4, 39,834 M. C. F. United Production Corporation's J. D. Jennings No. 5 on a pressure base of two pounds 14.4, 12,842 M. C. F. United Production Corporation's J. D. Jennings No. 6 on a pressure base of two pounds 14.4, 3,702 M. C. F. United Production Corporation's J. D. Jennings No. 10 on a pressure base of two pounds 14.4, 428,513 M. C. F.

Q. Now, what well is that?

A. J. D. Jennings No. 10.

Q. J. D. Jennings No. 10, and the M. C. F. was what?

A. 428,513.

Q. Expressed in figures, not using M. C. F., how much gas is that—how many million cubic feet of gas is that?

A. That is 428,513,000 cubic feet.

Q. That is Jennings No. 10?

A. Yes, sir. United Production Corporation's Cuellar Brothers No. 1—that gas was delivered at varying pressure [fol. 875] bases during the year; delivered on the contract pressure base there was 39,223 M. C. F.

Mr. Coates: What was that contract pressure?

A. It was billed at ten ounces part of the time; I didn't see the contract, but the delivery showed that at times it was billed on a ten ounce base and at others on a two ounce base. That delivery corrected to a pressure base of two pounds 14.7 is 37,725 M. C. F. United Production Corporation M. B. Gutierrez No. 1 on a pressure base of two pounds 14.4, 359,333 M. C. F. United Production Corporation F. G. Martinez No. 3 on a pressure base of two pounds 14.4,

5,278 M. C. F. United Production Corporation F. G. Martinez No. 4 on a pressure base of two pounds 14.4, 9,155 M. C. F. Southern Gas Utilities R. Hinant No. 4, 10,592 M. C. F. United Production Corporation F. Cuellar No. 1 on a pressure base of two pounds 14.7, 107,500 M. C. F. This pressure delivered at the Jim Hogg check meter is 516,891 M. C. F. No, that is wrong; it is 645,503 M. C. F.

Q. Expressed otherwise, that would be 645,503,000 cubic feet?

A. That is correct.

Q. That is for the period ending December 31, 1933?

A. Yes, sir.

Q. Do you know the point of origin of that gas?

A. I don't know whether I have that or not, Mr. Lange. I don't believe I have it. I have it for a month or two, but not for the entire year, and the month or two that I have [fol. 876] I don't seem to have with these papers. I can check that and tell you if I have it.

Q. All right. Now, Mr. Lewis——

A. I am not through with these deliveries, Mr. Lange.

Q. All right.

A. Henne Winch Fee No. 2 on a pressure base of two pounds 14.7, 5,473 M. C. F. Henne Winch Fee No. 1 on a pressure base of two pounds 14.7, 33,334 M. C. F. Henne Winch Cuellar No. 1 on a pressure base of two pounds 14.7, 95,789 M. C. F. A. J. Condron Rafael Garza No. 1 on a pressure base of two pounds 14.7, 73,354 M. C. F. Henne Winch F. Cuellar No. 2 on a pressure base of two pounds 14.7, 38,598 M. C. F. That, I believe, is all the deliveries to the Monterrey lines for that year.

The Court: Gentlemen, let's take a few minutes recess now.

(Recess.)

[fol. 877] (After Recess)

The Court: All right; proceed, gentlemen.

Q. Mr. Lewis, yesterday you referred to the fact that certain portions of the transmission line—the Pescadito-Jennings transmission line were reconditioned, and the operating expenses on which you had vouchers covering that reconditioning work during the period ending December 31, 1933.

A. Yes; I testified, I believe, that the materials and supplies that went into the lines were just charged to the maintenance account in the regular monthly distribution, and that the vouchers themselves did not show where the materials went.

Q. That is true, but——

A. I have some items of cash disbursement reports that show some details.

Q. Of what—of the labor costs?

A. There are some labor costs included in those.

Q. Have you got those with you?

A. I believe I have. (Witness refers to data.) Yes, I have a list of the cash disbursements report items that I have eliminated.

Q. Give us those that reflect labor costs in any particular item.

[fol. 878] A. In June, on Southern Gas Company's cash disbursement report No. 147 there was paid to one Rodriguez for ditching and backfilling Jennings six-inch line 10,960 feet, at four cents, or a total of $438.60. On cash disbursements report of Southern Gas Company, No. 149, to the same Rodriguez, ditching and backfilling, 23,285 feet, at four cents, $931.40.

Q. Could you give us the date of that disbursement?

A. I do not have the exact date. It is a June, 1933, cash disbursements report.

Q. In the month of June, 1933?

A. Yes.

Q. All right.

A. And in the same month, cash disbursements report No. 148 to Banks Moreland for cleaning and sand blasting and priming six-inch pipe on Jennings line, cleaned 20,399 feet at $.0212, $432.46; that rate is two and a fraction cents. Sand blasting 19,356 feet, at $.0270, $522.61; or a total of $955.07, less an amount charged to District No. 15 of $207.26 leaves a net amount charged to District 70 of $747.81. And cash disbursements report No. 150 of Southern Gas Company, in June 1933, to Banks Moreland, cleaning Jennings six-inch pipe, 18,131 feet, at $.0212, sand blasting 18,616 feet at $.0270, or a total of $887.08.

Q. Just right there. Express that in terms of cents per [fol. 879] foot.

A. For the cleaning it would be 2.12 cents per foot, and the sand blasting would be 2.7 cents per foot. And then

in June, 1933, to Rodriguez for ditching Jennings six-inch line, 9,170 feet, at three and a half cents a foot, $320.95. In July, 1933, Southern Gas Company's cash disbursements report No. 153, to Banks Moreland for cleaning 5,613 feet of six-inch pipe at 2.12 cents per foot, sand blasting and priming 11,661 feet at 2.7 cents per foot, $433.85. I believe that is all of the cash disbursements reports reflecting labor items that I have eliminated.

Q. Are there any other cash disbursements reports reflecting labor items that you have, covering that period, that show labor cost for reconditioning work?

A. I believe this is all that I have on the details of those items I have eliminated.

Q. You have no others, or have you any others for that period, reporting in detail as to the labor cost?

A. No, I did not get any detailed information except on these items that I have eliminated.

* * * * * * *

[fol. 880] J. P. KINNEY, a witness for plaintiffs, resumed his testimony and testified as follows:

Cross-examination.

Questions by Mr. Coates:

Q. Mr. Kinney, you testified in the hearing of this case before the Railroad Commission, did you not, sir?

A. Yes, sir.

Q. And that portion of page 2 of Plaintiffs' Exhibit No. 4—that is, the page styled Border Gas Company, Texas Border Gas Company, and South Texas Gas Company, Historical Cost of Fixed Capital as Shown by Books—that page, in respect to the portions thereof on which you prepared the basic figures, is the same as you introduced before the Commission, is it not?

A. Yes, sir.

Q. Mr. Kinney, did you make an audit of the books of these companies back to the beginning date?

A. You wouldn't call it a detailed audit; no, we made a—we made that for the purpose of establishing investments and operations to be proved through surplus reconciliations, to arrive at a figure for April 10th, 1928.

Q. Well, what do you mean, and what is generally meant in the accounting profession by an audit?

A. Well, there are several classifications of audits, probably a half a dozen, commonly known; there are various [fol. 881] style audits, detailed audits——

Q. Well, what was——

A. Balance sheet audits, company audits, complete audits, cash audits, special investigations—numerous kinds of audits.

Q. And what character of audit was this one that you made?

A. That was more or less of a balance sheet audit, we would term it.

Q. And you would not term it a complete audit?

A. It is a balance sheet audit, more or less.

Q. A balance sheet audit, more or less?

A. Yes.

Q. Did you examine and analyze the vouchers underlying each entry on the plant and property account?

A. We checked each and every voucher that was available at Laredo; some of the vouchers had been shipped to Houston, some back, some lost.

Q. And on about what per cent of the total entries, in numbers, did you examine vouchers?

A. About—I would say about eighty-five or ninety per cent of the vouchers were in Laredo, of that period.

Q. And did you examine all those that were in Laredo?

A. Yes, sir.

Q. And expressed in dollars entered on the plant and property account, about what per cent of the vouchers underlying the entries did you examine?

A. Practically all the vouchers, with very few exceptions, [fol. 882] were in Laredo. Some of the principal vouchers relating to dividends and financial transactions, for some reason or other, were not in Laredo.

Q. Now, does this item shown on page 2 of Defendant's Exhibit 4, headed Additions, is that column correct, as reflected by the books of the Company which you examined?

A. Yes, sir, of the old ledgers.

Q. Of the old ledgers. And what is the opening entry on the old ledgers?

A. The opening entry was a journal voucher, No. 1, charging plant equipment with $550,000.00, and crediting

capital stock with $300,000.00, and surplus with $250,000.00.

Q. Then the opening entry, as shown on these books of account, is $550,000.00, is it?

A. Yes, sir, as well as I remember.

Q. And this figure of $166,996.68 you have substituted for the opening entry, as explained in your direct examination, have you?

A. Yes, sir.

Q. That was on the basis of a bill of materials, or, I believe, styled Analysis of Investment which has been introduced here and styled Plaintiffs' Exhibit 6?

A. Naturally——

Mr. Lange: For the purpose of the record, Mr. Coates, that doesn't state a bill of materials.

Mr. Coates: Well, I changed it, and said analysis of in-
[fol. 883] vestment.

A. Naturally, from an accounting standpoint, if he knows his business, or half way knows it, he does not rely strictly upon a blank voucher—five hundred and fifty, debit this and credit that; he wants to know what is behind that.

Q. Yes.

A. So much this, and so much that. The consequence is that—when I saw the $550,000.00, I naturally wanted to know what it was—so much soap, water, materials, supplies, houses, or what-nots; and in order to arrive at that I went back into some of the old records of the franchise-holders, Mr. Johnson and Mr. Reiser, with the permission of Mr. Robinson and Mr. Thorne, and we finally dug up some of these old records, which disclosed that this $166,000.00 was all the equipment they had, and further evidence of some old capital stock tax returns around there, and correspondence with the Company showed that there were three hundred eighty-three thousand some odd that were intangibles; that was further substantiated and proved through yearly journal vouchers set up, showing that they did not compute depreciation on this three hundred and eighty-three some odd thousand, but on the one hundred and sixty-six thousand, and those two figures together made the five hundred
[fols. 884-910] and fifty thousand dollars.

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[fol. 911] Redirect examination.

Questions by Mr. Bobbitt:

Q. That figure you have been interrogated about last, that includes, as I understand from the books and records of the Company, all of the property, transmission, distribution, and everything else?

A. All property accounts.

Q. Inside and outside the city of Laredo?

A. I don't know where they were. Probably just as reflected on the books. I don't know where the properties were located.

Q. The old Border Gas Company and the books and records about which you have been testifying, are the books and records of the old Border Gas Company from its organization down to the time you testified about?

A. That's right.

Q. And were the books and records of that company fur-
[fol. 912] nished to you by the officers, employees, and Managers of the Company?

A. They were, yes, sir, at Laredo.

Q. At Laredo?

A. Yes, sir.

Q. And the United Gas Public Service Company, according to your analysis and figures here, have succeeded to the ownership of all these properties of the old Border Gas Company?

A. As far as I understand.

Q. Now, back in those early days, the old Border Gas Company owned the properties—the transmission properties, the gathering lines properties, as well as the distribution properties—all as one unit?

A. They handled the whole thing.

Q. And they even had some producing properties there, did they not—they owned the gas wells, did they not—if you know?

A. Well, I wouldn't say that I knew that. They bought some gas, I know, from the Texas Company in those days.

Q. You don't know how many gas producing wells the Border Gas Company owned itself?

A. I don't know.

Q. You were asked about the books showing Gas Purchases up to 1924, and I believe you stated that beginning 1924 they set up a different——

A. They began to classify their accounts a little bit different.

Q. Prior to that time how were the Gas Purchases handled on the Company's books?

[fol. 913] A. Just simply through a Gas Sales and Purchasing Account. The account was credited with all revenues, and charged for all purchases. It was just like the old Merchandise Account.

Q. And included in that account was the Gas Purchases?

A. On the debit side of that account.

Q. You testified a moment ago about dumping an account or item here and there?

A. That particularly applied to depreciation, retirement expenses, and such as that. They did not have any set and fast rule as to where to put them.

Q. Well, that same situation could obtain now with all these high-falutin' bookkeeping systems we have, couldn't it?

A. Couldn't only, but it does. A good many concerns forget about depreciation.

Q. You were asked a line of questions here, Mr. Kinney, by Mr. Coates in reference to whether there was an item in these records here for plans and specifications, and corporation expenses, and interest during construction—there were no separate items set up for those accounts?

A. No; in those days they overworked, as an accountant would say, miscellaneous and general expense.

Q. From an examination of the records of this Company, don't they reflect that they got the money together and built a transmission line and distribution system and went to selling gas?

A. Yes.

[fol. 914] Q. And the Company kept a set of books, which you have examined, and it was just about the customary kind for companies operating at that time, of that character?

A. Companies in the promotion stage—just getting started.

Q. You could not find anything in the Company's book and records that they furnished you justifying this item in excess of three hundred and eighty thousand dollars, could you?

A. Three hundred eighty-three thousand and some odd. I could not find anything and the Company officials at Laredo could not advise me.

Q. You tried to find it?

A. I asked the officials at Laredo.

Q. And you looked on the records and the Company's books there in trying to find it?

A. Yes, sir.

Q. And you interrogated the Company's officers?

A. Yes, sir; Mr. Robertson and Mr. Thorne.

Q. And Mr. Robertson was the Manager there?

A. Yes, sir.

Q. And you could not find any justification for setting it up after interrogating them?

A. No; they did not know.

Q. In connection with all those questions you were asked, there are no items about Supervisor's Expense or Sponsor's Expenses?

[fol. 915-920] A. Sponsors were not known in those days in Laredo.

Q. Were they known in other sections, according to your knowledge?

A. This is the first time I heard of it.

Q. Just one other question, Mr. Kinney. You are of Irish descent, aren't you?

A. Somewhat, yes, sir.

Mr. Bobbitt: I believe that is all.

The Court: Gentlemen, it is twelve o'clock, and we will recess until two fifteen.

(Thereupon at 12:00 o'clock noon, the Court recessed until 2:15 o'clock, P. M. same day.)

* * * * * * *

[fol. 921] Redirect examination.

Questions by Mr. Bobbitt:

Q. In discussing this matter of the three hundred eighty-three thousand dollars with the officers of the Company at Laredo, and trying to arrive at this amount set up of one hundred sixty-six thousand dollars, did you get information from the officers of the Company as to why that figure was placed at one hundred sixty-six thousand dollars, in-

stead of five hundred fifty thousand dollars, with respect to the Government income tax matter?

Mr. Coates: We don't object to his eliciting the information, but we would like for him to identify whom he talked to, so it would not be a conclusion of the witness that the party he talked to about it was an officer.

The Court: If he can identify him, he ought to do so.

Mr. Bobbitt: Wait a minute.

A. What is the specific question?

Q. Now, I am asking you if, in connection with the set-up on the books of the Company at one hundred sixty-six [fol. 922] thousand dollars, instead of five hundred fifty thousand, you had any conversation with the officers or managers of the Company, and to name the officers, if you recall them, in respect to that matter?

A. Now, just as to whether they were officers of the Company, I am unable to say; but the conversation was with Mr. Robertson and Mr. Thorne, principally with Mr. Thorne, who was, as I understood, chief clerk of the Laredo office.

Q. And Mr. Robertson was the District Manager of the Company at Laredo?

A. I saw very little of him during this examination.

Q. Do you know whether Mr. Robertson was District Manager at that time or not?

A. I understood he was.

Q. What conversation did you have with these officers with respect to this matter?

The Court: Hasn't he already testified with reference to this matter?

Mr. Bobbitt: Not with respect to this matter.

A. No; if my memory serves me right. I am not making this as a positive statement.

Q. Just give your best knowledge and judgment, or memory.

A. At this time, I will say, I was endeavoring for several days—in fact about a week of my work was consumed in the Lost and Found Department trying to get up some of these things, which the officers themselves apparently did [fol. 923] not know they were there, some of them. I was trying to get the specific details on this five hundred fifty thousand dollars. That was causing me considerable con-

cern at that time. However, I went to Mr. Robertson and said, "I have got to know something about this, and I want somebody to tell me something that knows something around here about what they have got; if they can't, I will have to take it up with somebody else." So he delegated Mr. Thorne, and we went upstairs on the second floor, and there was a bunch of old records up there, and we looked for several days, and finally we went down in the safe and I began to get into some old tax files there, which are pretty good files when it comes to the question of depreciable properties. Then among those files I found a claim—an assessment rather, from the Government, assessing the Company some amount of taxes that was in litigation at that time. There was quite a bit of correspondence between the New York, Houston and Laredo offices, Laredo playing a small part in it at that time; but among those tax documents was this capital stock tax return, upon which the intangibles were questioned and thrown out by the Department, and for depreciation purposes on the fixed assets this one hundred and sixty-six thousand came to light.

Q. Did the representatives of the Company advise you then about this arrangement with the Government, and the adjustment of its tax matters?

[fol. 924] A. No, it seemed—I asked them about that, and they said the tax matters were handled out of the New York offices of the Texas Company.

Mr. Coates: The Texas Company?

A. They were mixed in with it. That is what I was advised at that time by Mr. Thorne.

Mr. Coates: That is the oil company?

A. I don't know whether oil, gas, or what.

Q. Did the officers of the Company furnish you that letter which you hold in your hand?

A. Yes, sir.

Q. What is said there in respect to that matter?

A. You want the whole letter, or just the paragraph——

Mr. Coates: That has been all introduced in evidence.

The Court: Is that the same letter signed by Mr. Stein?

Mr. Coates: Yes.

Mr. Bobbitt: Yes.

Mr. Coates: We object to it as repetition.

The Court: I think it is repetition; it is in there once.

Mr. Bobbitt: It is just to identify that item of one hun-

dred sixty-six thousand that he has interrogated the witness about, and I would like for him to explain it to the Court and jury.

[fols. 925-926] The Court: If the testimony is already in, we don't need him to explain it. If it is something new——

Mr. Bobbitt: It is just offered in connection with his testimony—just one paragraph.

The Court: The whole letter is in. The objection is sustained, as to reading the letter again, as it was read yesterday very carefully.

Mr. Bobbitt: It was not in connection with this item. I don't think it is clear to the jury, if the Court please, just the connection it has with his testimony.

The Court: Well, you can make it clear, but you can't introduce any part of it again.

Q. This letter, and the correspondence you have referred to, was furnished to you, at the time you were making this audit and set-up, by the officers of the Texas Border Gas Company?

A. The material was either furnished to me on the job or mailed to me in the San Antonio office, one way or the other. Some information Mr. Thorne mailed me.

Q. And all of the information that you have testified about, and all of the information that you set up in this exhibit, you acquired from the officers of the Gas Company and in their offices at Laredo?

A. From the books and records and information furnished by the employes or officers, whatever they are.

Mr. Bobbitt: I believe that is all.

* * * * * * *

[fol. 927] Leon O. Lewis, Jr., a witness for the Plaintiff, thereupon resumed the stand, and testified:

Cross-examination.

Questions by Mr. Coates:

Q. Mr. Lewis, you are familiar, are you not, with this company's method of accounting with respect to its operating revenues?

A. Yes.

Q. It is true, is it not, that where the company reads a consumer's meter and determines the amount of the bill and sends the bill, that amount of the bill is entered on the company's books as an operating revenue?

A. That is correct.

Q. And that that item stays on the books as an operating revenue whether the bill is paid or not?

A. That is correct.

Q. Then the amounts actually collected by the company from the gas and the services it sells and furnishes, are less than the revenues shown on its books, by the amount of the bills that it does not collect; isn't that true?

A. That would be true, as a general rule.

Q. Well, is it true in the case of this company's books?

Mr. Bobbitt: Let the witness answer the question.

A. If you mean, is the money collected from the consumers more or less than the money during that period charged, I do not know, because the accounts receivable [fol. 928] may be larger at one end of the year than at the other end of the year.

Q. I will ask the same question again; perhaps you didn't understand it: When a bill is rendered, that goes on the company's books as a part of its operating revenues, doesn't it?

A. Yes.

Q. And the amount of that bill stays among the operating revenues whether the bill is collected or not, doesn't it?

A. It does.

Q. And the operating revenues which you have included in your operating statements, reflect the amounts entered on the company books for bills sent to consumers, do they not?

A. That is correct.

Q. And to the extent that the amount of gas and service bills entered as operating revenues—to the extent that those bills are not paid, the company never collected the money, did it?

A. No sir, if the bill is not paid, the company never got the money for it.

Q. Then the operating revenues as entered on the books, overstate the moneys collected for service, by the amount

of bills for that particular accounting period not paid, do they not?

A. If you consider the revenues alone, it overstates the amount collected, but if you consider the item in expenses as charged off accounts, with the revenues, it is correctly reflected in the statement.

Q. True. Now, how is the ordinary accounting method, and the usual and customary accounting method of bringing [fol. 929] operating revenues in line with the actual amounts collected?

A. Any concern that does a credit business has an option of two methods that are considered as good sound accounting. The first of those methods is to charge to operations those accounts which are found to be uncollectible, and the second is to set up a reserve to take care of the uncollectible accounts. The reserve method is generally considered the better practice for the reason that at the end of any accounting period, the concern will have accounts on its books, some of which will not be collected, and at the close of that period the concern does not know which of those accounts will be collected and which of them will not be collected, so that it sets up a reserve in an amount which they anticipate will take care of the uncollectible items.

Q. Then when the accounts which prove to be uncollectible for that particular period are ascertained, is it likewise good accounting practice to adjust the reserve for that period to show the accounts which actually have not been collected?

A. Will you read that question? (Question is read to witness)

Q. In other words, to substitute the actual uncollectible items for the amount of the reserve set up to provide for uncollectibles?

A. As I stated before, it is generally accepted good accounting practice to charge to operations either the actual accounts charged off during the year; or a proper reserve provision.

Q. Will you read the witness the question? (Question is read)

[fol. 930] A. I answered that question when I stated it was good accounting practice to either charge to operations the amount of the items charged off, if you are on one basis, or the amount set up in the reserve.

Q. Which bears the closest relationship to the actual facts:—adjusting the reserve entry to show the actual uncollectibles or deducting the reserve set up to provide for uncollectible accounts?

A. Over a period of years, it seems to me, the best accounting practice would be to set up the reserve and then charge the items which are found to be collectible against the reserve because if you adjust that reserve to the actual charge-offs, you have no reserve at the end of the year to take care of the accounts now on your books which will not be collected.

Q. You set up this reserve currently by months, do you not?

A. It may be set up monthly or annually or semi-annually, whatever the operating policy of the company might be.

Q. Well now, for the accounting periods which you have reflected in Plaintiff's Exhibit No. 8, do the operating revenues therein shown contain accounts which have not been paid, and proven to be uncollectible?

A. For the year ended December 31, 1933, there is included in customers expense the amount that the company set up during that year in the reserve account.

Q. How much?

A. For the year ended December 31, 1933, there was set [fol. 931] up as a provision for bad debts and charged to operations in the Laredo district, $2,633.67. I have allocated to the city limits of Laredo the proportionate part of the amount which the gas sales within the city limits of Laredo bear to the total gas sales for the district; so that I have included in my exhibit as a provision for bad debts, $1940.75. Now, there was an additional reserve for bad debts set up in the San Antonio transmission district of $815.00. I have allocated no part of that $815.00 to the city limits of Laredo for the reason that the transmission system does not have any credit sales in the city limits of Laredo.

Q. Do you know whether the transmission system has any losses with respect to bad debts?

A. If they do; even if they have them, they could not arise within the city limits of Laredo, because they have no credit customers within that boundary.

Q. Now, in what account classification does this item of $1940.75 appear in your operating statement for 1933, as contained in plaintiff's Exhibit 8?

A. It is included in customers expense in the total of $14,145.74.

Q. I see; now, having included that item in this operating statement for 1933, haven't you, in another portion of this exhibit set forth the item on a page which you head as what you consider questionable items?

A. I have not.

Q. You have not. Well, have you done that with respect [fol. 932] to any of the operating expense accounts for the peariod 1933?

A. No, sir.

Q. Have you done that for all of the other periods which are set forth in Plaintiff's Exhibit 8?

A. For the first four years shown in the Exhibit, I have set forth on page 10 a summary of questionable items.

Q. Now, you have not done that with respect to the operating statement for the year 1933?

A. No, sir; I have not.

Q. Why?

A. Because the major portion of the items set forth in the questionable items, was not susceptible of any verification on my part in prior years, for the reason that not all of the charges but most of them originated on the books of the operating companies of the United Gas System group. My examination was confined to the South Texas Gas Company and the Border Gas Company for the first four yearly periods mentioned, and all I saw in support of those items was inter-company invoices, and I was not able or had no way of determining whether the items were proper or not.

Q. And when you came to United Gas Public Service Company, you had a different accounting situation, did you?

A. Much different.

Q. Are you content to let the operating expense items as set forth on page 1 of Plaintiff's Exhibit 8, and the amount thereof, represent your accounting judgment as to the oper- [fol. 933] ating expenses for this particular period?

A. Yes, and no. In connection with the general expenses allocated from the general office, the scope of the examination and the time I had to spend on it, I could not possibly go thru all of the affiliated companies of the United Gas System and all of the entries in the general expense accounts of United Gas Public Service Company. So that for those items, I have used the percentages of allocations that the company is now using, because I did not have the time to

get the information I would have to have to build allocation factors of my own. So that so far as the general expense, allocated from the Houston general office is concerned, I am still unprepared to say whether it is fair or unfair. I have just taken the only alternative I have in checking that $1,500,000.00 of expense.

Q. But, within the limits afforded by the time and the scope of your investigation, this represents your best judgment; that is, these operating expense items represent your best judgment in the light of the explanation which you have made, which you can give at this time and in this hearing as to the amounts and nature of these expenses?

A. With the exception of the general expense item as I have qualified it, they do represent my best judgment; and the general expense item represents a necessity, you might say.

Q. I see. Well, are you pursuing further studies at this time with respect to the general expense item?

A. I could not pursue that study without being in Houston [fol. 934] where the books of the company are located, and familiarize myself with the entire operating conditions of the United Gas Public Service Company, and all of its subsidiary companies.

Q. Then for the purposes of this hearing which is now in progress this represents the most and the best that you are able to do; is that correct?

A. As I stated, it represent- in my judgment the fair allocations to the city limits of Laredo, except for general expense, and that may be fair or unfair—I don't know about that, because I am not in a position to say about that.

Q. Now, with respect to the year ended July 31, 1932, Mr. Lewis, what amount of uncollectible accounts do you include in the operating expenses for that period?

A. $2,874.47.

Q. And is that included in the item of customers expense?

A. There is included in customers expense $2,773.64, and in general expense $100.83.

Q. Now, does that represent the reserve, or actual uncollectibles for that twelve months period?

A. That represents the reserve.

Q. And that is the reserve which was set up for uncollectible accounts for that particular period. Do you know what the actual uncollectibles were within that accounting period, Mr. Lewis?

A. I believe I have that information, Mr. Coates. I might add that during that accounting period, there were [fol. 935] charged off numerous accounts which had accumulated over a past period of as much as two years prior thereto; they had neglected to charge off accounts, and they just cleaned them out in that period, so the charge-offs were much heavier in that year than normally they would be.

Q. If you do not have that readily available, I will waive the question for the time being, and we can come back to it later. You can make a note of it and have it for us tomorrow.

A. During that period I know they charged off a lot of accounts for as much as two years back, and used up all the reserves and had to set up some more.

Q. Now, Mr. Lewis, I believe you have included in this amount of $2,773.64, I believe you testified, in your operating statement for the year ended July, 1932?

A. There is a total of $2,874.47—there are two items, one in customers expense and the other in general expense.

Q. That is the reserve set up for that period?

A. That is the amount charged on the company's books to general expense and customers expense for the provision for bad debts.

Q. And the actual uncollectibles for that period were in excess of those amounts?

A. Yes, although they all did not originate in that period; some of them went back as far as 1929 and 1930.

Q. Now, in your judgment as an accountant, does that reserve in the amount which you have stated, reasonably represent the amount of uncollectible accounts for the period?

[fol. 936] A. Well, as I stated, Mr. Coates, the company has been setting up certain percentages of sales for reserve for bad debts, and the amounts charged off in July, 1932——

Q. Well, I am now directing your attention to the reserve figure and not the actual figure.

A. I understand that, and I am trying to answer your question. You asked me for the opinion, if the reserve was fair or sufficient, or some such. Will you read the question?

Q. Well, what I asked you was whether or not you considered the amount set up in this reserve of $2,773.64 as being a fair and reasonable approximation of the uncollectible accounts for that period.

A. From past experience of the company, as I testified, the reserves that they had set up prior to July 31, 1932,

were not ample to care for the accounts they charged off during that year, and for that reason I am inclined to believe that the reserve as set up by the company is not excessive.

Q. Now, then, why did you include that amount in the heading of questionable items on page 12 of Plaintiff's Exhibit 8? Does that represent your judgment?

A. Yes, it is questionable in that in rate controversies it is an item that is subject to controversy, and in order that the Commission and the courts or whoever might review these exhibits might know the item was there, I set out in that schedule those items which in my opinion were subject to some controversy in a rate controversy.

[fol. 937] Q. Well now, not going into the matter of what is allowed or disallowed in rate controversies, but stating your judgment as an accountant, I believe your testimony has been that you do not regard that figure as excessive?

A. That is my testimony.

Q. And then it is your accounting judgment, that figure not being excessive, is properly included among the operating expense items?

A. Mr. Coates, you realize——

Q. I am asking you for your accounting judgment.

Mr. Bobbitt: Let the witness answer the question, Mr. Coates.

Mr. Coates: I am directing him to the character of the answer.

Mr. Bobbitt: You can not direct the answer. In other words, Mr. Coates asks the question, and if he doesn't start off just as Mr. Coates thinks he should start off, then he wants to stop him.

The Court: That is sometimes advisable for lawyers to do that, but I do not say that it is this time. Let me hear the question read, and I will tell you my view about it.

* * * * * * *

[fol. 938] The Court: Now, he can answer, I think, what his judgment is.

Mr. Bobbitt: He just started and spoke about two words and Mr. Coates stopped him.

A. About ninety-nine per cent of these questions can't be answered "yes" or "no".

Q. Well, I am not trying to pin you down to a "yes" or "no" answer, but I don't want you to get on to what is

proper for this Court or this jury to allow in a rate case. I am asking for your accounting judgment about a matter, Mr. Lewis, which is my concept of what is admissible testimony.

The Court: Listen: You forget what my judgment might be or the jury's judgment or anybody else's, but give your judgment about what ought to be done; that is what he is asking for.

A: I can't give that judgment except with certain qualifications, because this exhibit was not prepared to reflect the earnings of the company for the stockholders; it was not prepared for any purpose except to put figures before a Commission or a Court, and for that reason items which in my accounting practice I would say are fair charges to operations must be treated a little differently in that respect.

Q. Now, that is just your opinion about it?

A. Yes, that is my opinion.

Q. Now, in the revenues reflected in the operating state- [fol. 939] ment for the year ended July, 1932, there are amounts of bills sent but not collected, are there not, Mr. Lewis?

A. Well, not literally. Included in the revenues are the total amounts billed to the customers.

Q. Yes, sir.

A. Some of that may have been uncollected and some of it has been collected; some of it has possibly been charged off. But that amount represents the total amount charged customers.

Q. Represents the total amount charged to customers, and does not purport to represent the total and exact amount collected?

A. It does not.

Q. Then in your experience in examining the business transactions of concerns of this sort as reflected by their books it does include some accounts which have not been paid?

A. I am sure that it includes some amounts which have not been paid.

Q. Now, Mr. Lewis, in your testimony this morning you stated how you apportioned distribution system expense and transmission system expense. Can you gvie me, Mr. Lewis, the amounts included in the operating statement for the year ended December 31, 1933, which are distribution system expenses and so classified?—in other words, what I want you

to do is to separate by account classifications the amounts which you have consolidated in here as between distribution [fol. 940] and transmission expenses.

A. I will just take the items as they appear on the exhibit.

Q. That is all right.

A. Gas Purchases includes the transmission system expenses—I forget the exact title of the account—Account 113-20.

Q. Yes.

A. It is gas purchase expense on production. I forget the exact title name, but it is all gas purchases here, in the amount of $15,138.87, and in the distribution, Account 113-20, a credit of $141.77, gas used in operations.

Q. That is in company operation?

A. Yes, sir—making a net figure of gas purchases of $14,997.10. The next account, transmission system operations, includes transmission system operating expenses, Account 113-24, in the amount of $2,378.02, and gathering system expense in the amount of $133.67. Transmission system maintenance account in the amount of $1,645.39 is taken from the general ledger, Account 113-25, transmission system maintenance. Distribution system operations——

Q. Mr. Lewis, maybe I can shorten this thing.

A. I have the figure now.

Q. All right.

A. —includes distribution system operating expense, Account 113-26, in the amount of $10,806.90. Utilization operating expense, Account 113-31, $2.41. Utilization mainte- [fol. 941] nance, Account 113-31, $5.47, making a total of $10,814.78. Distribution system maintenance in the amount of $4,609.09 is Account 113-29. Customers expense is Account 113-32 in the amount of $14,145.74. That is all distribution system. Now, business expense in the amount of $2,805.19 is all distribution, Account 113—I believe 34 is the number of that—113.34. District general expense includes transmission system district general expense, Account 113-36 in the amount of $899.45. Distribution system district general expense, Account 113-36, in the amount of $8,183.06. I have given you the district general expenses of $8,183.06?

Q. Yes.

A. And $889.45, representing district general expense. Then the general expense allocated from the general office,

distribution system $14,504.89, and transmission system $3,877.99, and general maintenance allocated from the general office to transmission system $411.03, making a total of $27,876.42 general expenses.

Q. You didn't allocate that maintenance of general structures item as between transmission and distribution, did you?

A. No, sir; it is all transmission.

Q. All transmission?

A. The maintenance of general structures is, as I have it, all transmission expense. The taxes, I can't give you any account numbers on that, because I took the company's [fol. 942] analysis of taxes and allocated on the various bases discussed this morning; but distribution system taxes are $11,959.99; transmission system taxes, $1,933.07, making a total of $13,893.06.

Q. Now, Mr. Lewis, without taking the time to do it now, I wonder if you can take your operating statement, together with your work papers, for the period ended December, 1933, and in the same detail and by the same sub-account classifications as used in Defendant's Exhibit 3, which is the operating statement for the same period, put the amounts that you have included under each account in a parallel column with the amounts included in Defendant's Exhibit 3?—I mean over night.

A. I think I have done that. May I have a copy of Defendant's Exhibit 3, to be sure these figures are what they purport to be?

[fol. 943] Q. There it is. (Counsel hands copy of exhibit to witness.)

A. I have made changes of classifications either in my exhibit or in the defendant's exhibit. The total expenses and revenues and net are the same, but there may be some little switch in classifications here. Is that what you want?

Q. Yes; if you made a switch in classifications, point it out.

A. Now, let me be sure I understand what you want, before start this.

Q. All right. Now, what I want——

Mr. Bobbitt: Now, state again just what you want, Mr. Coates.

Q. What I want is for you to take the breakdown of operating expenses—the items shown on pages 2 to 5 of

Defendant's Exhibit No. 3, and state, first, by each account classification there the amount included in Defendant's Exhibit 3 and the amount included by you in Plaintiff's Exhibit 8.

A. On pages 2 and 5?

Q. Yes, for the period 1933—the calendar year.

Mr. Bobbitt: May I ask how much time that will take, Mr. Lewis?

A. Well, I didn't understand at first. It will take considerable time.

Q. I see.

A. I have just set the figures up in general account classification, but I had not made the——

[fol. 944] Mr. Coates: Well, the record already reflects that I have suggested that he not take the time to do that on the stand now, but if he can do it during the course of the evening, and hand it to us in the morning.

A. I don't believe I can give you that, Mr. Coates, because on some of those accounts I do not have the sub-account captions. I have just treated the general account classifications, and in some of the adjustments I have made I have not carried it to the sub-account captions, and I don't know whether I can do that or not.

Q. Well, will you do it as nearly as you can, and where you have got a lump, and not broken, why, show the lumps.

A. Well, I can give you the lumps now.

Q. Well, you have it broken as to some of these accounts, have you or have you not?

A. Not my allocations; I made my allocations in totals, and I would have to extend the percentage allocations of each separate item under the account named, in order to—I think I can give you that information on the taxes—that is, the information—the items on page 5, but I can't on the items on page 2.

Q. Well, can you give that information with reference to the transmission system expenses?

A. Not accurately, because the maintenance items that I have eliminated, I didn't undertake to eliminate them in sub-account captions here; I just eliminated them from the total account transmission maintenance.

[fol. 945] Q. For instance, do you show in your work papers the amount for superintendence, operating labor, which you included?

A. I have that figure in total only. As I say, I would have to run my percent allocations to Laredo out, in order to arrive at comparative figures to these.

Q. How about your operating supplies and expenses?

A. They are all just in exactly the same boat. I have allocated on the total of the accounts in the subcaptions, so that in every instance to get the comparative figures, why, I will have to run out the per cent allocations to the City of Laredo.

Q. Well, have you ascertained by analysis of this Defendant's Exhibit No. 3, for the twelve months' period ended December, 1933, and a comparison with Plaintiff's Exhibit No. 8, wherein the principal differences lie between those exhibits—is it in the top figures used?

A. Some of it would be in the top figures and some would be in methods of allocation, and some would be eliminations. As I said, I have made the comparison of the items shown on page 1 of Exhibit 3, but I have not made it of the subaccounts, for the reason that I did not extend those subaccounts in percentage allocations.

Q. Well, have you carried the analysis far enough so that in the case of each expense account as shown on page 1, you can state whether the difference between the figures [fol. 946] which you derived and the figures which are set forth in the Company's books are due to bases of allocation or eliminations, or both?

A. I think I can give you within a small figure the exact differences, if that is what you want.

Q. And what occasioned it?

A. Yes, sir.

Q. That is what I called for.

A. Well, why didn't you say so?

Q. If I can't get it in any more detail. If you have got it by just these main accounts, why, I will take it any way I can get it, Mr. Lewis.

A. O. K. Are you ready to start?

Q. Yes.

A. The first item of Gas Purchases shown by Defendant's Exhibit 3—we will call it Production Expense, shown

by Defendant's Exhibit 3, to be $21,111.61, in Exhibit 8 the corresponding figure is $14,997.10.

The Court: Pardon me just a minute. Is that Defendant's Exhibit 8 or Plaintiff's Exhibit 8?

A. Plaintiff's Exhibit 8.

Q. Plaintiff's.

A. The difference is $6,114.51. That difference is brought about, first, by a difference in the rate used for Gas Purchases in Defendant's Exhibit——

Q. How much is attributable to that, do you know?

A. I was coming to that.

[fol. 947] Mr. Bobbitt: He is telling you now.

A. Defendant's Exhibit 3 computed Gas Purchases at a rate of five cents per thousand cubic feet. I have used a rate of $.04257 per thousand cubic feet, or 4.257 cents.

Q. All right.

A. The testimony indicated that in Defendant's Exhibit 3 there was purchased for resale within the city limits of Laredo 355,623 M. C. F. The difference in that rate used is $.00743, which, applied to the volume of 355,623 M. C. F., gives us $2,642.27.

Q. All right.

The Court: Gentlemen, are we at a good place to stop.

The Witness: We will be in just a minute, Your Honor.

The Court: In just a minute?

The Witness: Yes, sir.

Mr. Fitzhugh: Mr. Lewis, the difference you referred to there in decimal figures was dollars, was it not?

A. Yes; it is seven hundred and forty-three one-thousandths of a cent, or seven-tenths of a cent.

Q. All right.

A. The difference brought about in here by the difference in the rate used is $2,642.27. Defendant's Exhibit 3 includes as purchased gas expense for that one-cent gathering charge in the Carolina-Tex field $3,422.53, which I have [fol. 948] not included in my Gas Purchases expense. There is an unaccounted for difference of $49.71——

Q. That is unaccounted for gas, or——

A. No, that is just the difference that I didn't locate.

Q. I see.

A. Making a total difference of $6,114.51.

Mr. Coates: Now, is this the stopping point you are talking about, Mr. Lewis?

The Witness: Yes, sir; this is it.

Mr. Coates: All right.

The Court: Gentlemen of the jury, I will ask you to retire for a few minutes.

(Jury retires from court-room.)

(Conference, off the record, between Court and counsel.)

The Court: Bring in the jury, Mr. Sheriff.

(Jury is returned into court-room.)

The Court: The reason I asked you to step out just then, gentlemen, was because I wanted to have a conference with the lawyers about whether to hold court in the morning or not. It had been our plan to hold court until noon to-morrow before recessing, but after talking with the attorneys for both sides, it is decided that we will now recess until nine o'clock next Thursday morning, which will be the 22d—Thursday, the 22d. —. You are excused.

(Thereupon, at 5:05 o'clock p. m., the case was recessed until 9:00 o'clock a. m., Thursday, March 22, 1934.)

[fol. 949] Thursday, March 22, 1934

Morning session: 9:00 a. m.

The Court: Are you ready, Gentlemen? Proceed.

L. O. Lewis, a witness for plaintiffs, resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Coates:

Q. Mr. Lewis, when we recessed you had just finished giving the amount of operating expenses shown in your operating statement for the calendar year 1933 attributable to distribution system operations and attributable to transmission system operations. Do you recall that?

A. Yes.

Q. And have you before you the total amount of operating expenses for the year 1933, exclusive of the well head price of gas attributable to distribution system operations?

A. Yes, I have that.

Q. And likewise the transmission system operations. If you give those two figures, identify them.

A. Do you want the top figure, or the amounts allocated to Laredo?

Q. Amounts allocated to Laredo—that is, exclusive of gas purchases expense.

A. I will give you the distribution system operations first. [fol. 950] Would you like to have the account numbers?

Q. No. All I want—you had given it by accounts, and I wanted the total, if you have it.

A. I will have to make a computation. * * * Total operating expense distribution system properties, exclusive of gas purchases, amounts to $67,022.74.

The Court: Repeat those figures.

A. $67,022.74.

Mr. Bobbitt: That is for 1933?

A. Yes, sir.

Q. Now, for transmission, likewise exclusive of your figure for gas purchases.

A. Total operating expenses of the transmission system properties; exclusive of gas purchases, $11,278.62.

Q. Now, I have requested you about the time we recessed to make a comparison between the operating expenses by accounts for the year 1933 as shown in Plaintiffs' Exhibit 8 with the operating expenses by accounts with as much break-down as you have, as reflected by Defendant's Exhibit 3, explaining the differences in so far as you are able to explain them.

A. May I have copies of the two exhibits, please, sir, Plaintiffs' Exhibit 8 and Defendant's Exhibit 3? (Exhibits handed to witness.) I believe I had completed the reconcilement of the gas purchase figures, had I not?

Q. Yes.

A. The next expense caption appearing in Defendant's Exhibit 3, page 1, is transmission expenses, $10,131.28. That [fol. 951] figure, in conformity with the book classification accounts, would have two sections: transmission system operations and transmission system maintenance. Refer-

ring to page 2 of Exhibit 3 for comparative purposes, I have considered the first six sub-accounts as transmission system operations and the remaining accounts under the section as transmission system maintenance, which conforms to the classification used on the company books. That reclassification gives us, then, transmission system operations $6,729.62 and transmission system maintenance $3,401.66. In Plaintiffs' Exhibit 8 transmission system operation is shown at $2,511.69 and transmission system maintenance $1,645.39. Those are the comparative figures.

Q. Yes, sir.

A. Now I will take each section separately to account for the differences. Transmission system operating expenses per Plaintiffs' Exhibit 8 amount to $2,511.69. On Defendant's Exhibit 3 the same item is shown as $6,729.62, or a difference of $4,217.93. In Defendant's Exhibit 3 transmission system expense has been included under the transmission system expense in the amount of $938.29. I believe those three figures will tie in with the total. The major difference in transmission system operating expenses is in the item of pipe line rentals included in Defendant's Exhibit 3, which I have eliminated in the preparation of Plaintiffs' Exhibit 8 for the reasons stated several days [fol. 952] ago.

Q. And that is the figure of $2,352.90?

A. That is correct. I have eliminated in the operating expenses pipe line rental paid for the entire year, whereas in Defendant's Exhibit 3 that pipe line rental has been eliminated only for two months, making a difference of $2,352.90. There is a difference in gathering system expenses of $804.62. The reason for that difference is that in Defendant's Exhibit 3 gathering system expense is allocated on the basis of three inch equivalent and lineal miles of pipe to the Laredo sector and from there on the basis of volumes of deliveries in the Laredo lines. That gathering expense, according to my understanding, is incurred in the Jennings field and according to the deliveries one and a half per cent of the Jennings Field gas was transported to the Laredo sector lines; whereas the method of allocation used in Defendant's Exhibit 3 of allocation on the gathering system expenses having been made upon lineal and three inch equivalent basis allocates 52.9 per cent to the Laredo lines. On the other hand, in allocating the

gathering charge in the Carolina-Tex. field of one cent per thousand cubic feet, one hundred per cent of the gathering charge was allocated to the Laredo district lines for the reason that all the gas was delivered to the Laredo lines, whereas in the Jennings area the allocation to gathering [fol. 953] system expenses was on the basis of three inch equivalent and lineal miles, allocating 52 per cent to the Laredo lines, whereas only one and a half per cent of the Jennings field gas was delivered to Laredo. That makes a difference in the gathering system expense of $804.62. In allocating the transmission system expenses there is a difference in the allocation factor of 3.08 per cent. Defendant's Exhibit 3 allocates that expense on the basis of three inch equivalent and lineal miles of pipe to the South Texas area and lineal miles and three inch equivalent pipe to the Laredo sector and on the basis of volume of gas delivered from there on to the city of Laredo, allocating a percentage of 9.72 per cent of the transmission district 70 operating expenses to the Laredo city limits. The method of allocation which I have used, as it was explained several days ago, allocates a percentage of 6.64 per cent to Laredo, a difference of 3.08 per cent. That percentage applied to the total District 70 transmission system operating expenses after elimination of the pipe line rental charge amounts to $1195.91. The total of the differences enumerated amounts to $4,353.45. The difference between the two exhibits is $4,217.93, leaving an unlocated difference of $135.50. The item of transmission system maintenance, the first difference there is in the elimination of replacement items which are not properly chargeable to operations for the reconditioning and re- [fol. 954] placing of transmission lines. In Defendant's Exhibit 3 $3368.67 has been eliminated from transmission system maintenance, whereas in Defendant's Exhibit 8——

Q. You mean Plaintiffs' Exhibit 8?

A. Yes, sir. In Plaintiffs' Exhibit 8 $33,646.17 has been eliminated, or a difference in the elimination of $537.50. The percentage of allocation used in Defendant's Exhibit 3 is 9.72 per cent. That percentage applied to the difference in elimination of $537.50 accounts for $52.24 of the difference. The difference caused by difference in allocation factors amounts to $903.59, which is 3.08 per cent of $29,337.57, the total transmission system maintenance of Dis-

trict 70 after the eliminations have been made. The difference in gathering system maintenance, which is explained exactly as that under gathering system operations, is $434.17, making a difference of $1490.00. The net differance between the two exhibits is $1756.27, which indicates an unlocated difference of $266.27. The difference in transmission system operations of $1,083.81 and in distribution system maintenance of $353.83 are occasioned by difference in allocation factors entirely, and Plaintiffs' Exhibit 8 includes more distribution system operation and maintenance expense than Defendant's Exhibit 3. Customers expense is only $9.20 difference, and I made no attempt to reconcile that.

Q. Much obliged.

A. You are welcome.

[fol. 955] Mr. Bobbitt: Those are the figures made and gotten up at the request of Mr. Coates before we adjourned last week?

A. Yes, sir.

Q. Now, Mr. Lewis, does that give——

A. I am down to the general expense section. I will have to look just a moment to find that.

[fol. 956] Q. I was thanking you, Mr. Lewis, for not attempting to reconcile a $9.00 difference.

A. I appreciate that. I will take up the Taxes next. I think I have those figures here.

Q. Now, taking these in order, you have covered down to Customer's Expense, have you?

A. I have finished with Customer's Expense, because there was only the $9.20 difference in that item.

Q. You are through Customer's Expense, and you are now skipping New Business and General, and are going to Taxes, with the idea of coming back.

A. I am coming back then, because I can dispose of Taxes quicker than I can the others.

Q. All right.

A. Defendant's Exhibit 3 shows the item of Taxes in the amount of $14,921.77; Plaintiffs' Exhibit 8 shows taxes of $13,893.06, or a difference of $1,028.71. All except about $25.00 of that difference is in the ad valorem taxes. Webb County taxes are shown in Plaintiff's Exhibit 8 at $3,770.76——

The Court: Is that Plaintiffs' Exhibit 8, or Defendant's?
The Witness: Plaintiffs' Exhibit 8.

A. And in Defendant's Exhibit 3 at $4,515.11. The City of Laredo taxes contained in the Plaintiffs' Exhibit 8 amount to $6,030.47,—making a total ad valorem taxes of those two [fol. 957] districts in Plaintiffs' Exhibit 8, $9,514.75, and in Defendant's Exhibit 3, $10,545.58, making a difference in those two items of taxes of $1,030.83; the net difference between the two exhibits is $1,028.71; that accounts without about $2.00 for the difference. Now, there are some small differences one way or another in all of these items, of small amounts, but I didn't attempt to show all of those.

Q. Well, what accounts for that difference of $1,028 odd dollars?

A. It is the difference in the method of allocation of taxes. The City of Laredo taxes in Defendant's Exhibit 3 have all been charged to operations within the City of Laredo, whereas in Plaintiffs' Exhibit 8 a proportionate part of those taxes, based on the number of meters inside the city and outside the city, has been allocated to operations outside of the city limits, for the reason that the General Properties, the General Office, the Intermediate Pressure Mains, and a good part of the Property located within the City of Laredo, are also used to serve consumers outside of the city. There is a net difference in the City of Laredo taxes of approximately $300.00.

Q. And what accounts for the difference in the Webb County taxes?

A. That also is a difference in the basis of allocation. [fol. 958] There are, as I said, some other differences in other taxation districts—small differences one way or another, which I have not attempted to reconcile. In allocating ad valorem taxes I have allocated Webb County taxes paid on transmission system properties to towns in Webb County, based on the volume deliveries at the town borders, allocating to the City of Laredo 67.71 per cent of the Webb County taxes paid. In distribution, on the distribution properties Webb County taxes have been allocated on the basis of the number of meters in Webb County—that is, allocating to each town in Webb County the proportionate part of the taxes paid on distribution system properties which the meters located within that town bear to the total meters in the district, and have allocated to the City of

Laredo 89.96 per cent of the Webb County taxes paid on distribution properties. I do not have the exact allocation percentages that have been used in Defendant's Exhibit 3; so I am not sure as to the difference in the percentage of allocation.

Q. Can you state the dollar difference due to the difference in bases of apportionment of Webb County taxes?

A. Yes, I have that figure.

Q. That is, you have stated the City of Laredo taxes difference is approximately $300.00. Now, I want the difference stated in dollars for the Webb County taxes.

[fol. 959] A. I believe that the figure I gave you a while ago for Webb County includes all County taxes allocated to the transmission—I just put it on the Webb County line here for comparison. The figure $4,515.11 which I gave as Webb County taxes, contained in Defendant's Exhibit 3, is not all Webb County taxes; it is the total State and County taxes paid on the properties in all the counties. So that the difference in all—instead of the difference in Webb County taxes paid, this difference I am giving you is the difference in all County and State taxes paid, which amounts *of* $744.35; and that difference is all due to a difference in percentages of allocation, because the top figure is the same in both instances.

Q. And did you allocate these taxes on transmission system properties to the markets located in the taxing area, or did you allocate it on the basis of meters or volume of deliveries at the city gate?

A. The transmission district?

Q. Yes.

A. Are you speaking of the State and County taxes now?

Q. Yes, sir.

A. The State and County taxes paid in Duval County have not been al-ocated to the City of Laredo; the State and County taxes paid in Starr County have not been allocated to the City of Laredo; and the State and County taxes paid in Zapata County have not been allocated to the City of [fol. 960] Laredo—

The Court: All that testimony was given the other day.

Mr. Coates: Yes, sir.

Q. My question was whether the apportionment had been of these distribution taxes to the markets, or rather these

transmission taxes to the markets located within the tax district.

A. Well, I was giving you this information first because there were certain County taxes that I had not allocated to Laredo.

Q. I see.

A. Webb County is the only County taxes on the transmission properties that I have allocated to the City of Laredo.

Q. Webb County?

A. And that tax has been allocated to the towns in Webb County on the basis of the volumes of gas delivered to the respective town borders.

Q. And none of that Webb County tax allocated to markets not located in Webb County?

A. No, sir.

Mr. Bobbitt: You didn't mention Jim Hogg, Mr. Lewis,—Jim Hogg County, about taxes.

A. None of the Jim Hogg County taxes have been allocated to Laredo. I may add that the reason that I did not [fol. 961] allocate the Duval County, Jim Hogg and Starr County taxes to the City of Laredo is that the transmission lines serving Laredo are not located in those counties; and in connection with the Zapata County taxes, the line from Jennings Field to Pescadito Junction, the southern end of that line is in Zapata County, but the gathering system and a short section of their transmission line are used principally for transporting gas to Monterrey. So that I have not allocated any part of the Zapata County taxes to Laredo. The greater part of the Jennings-Pescadito line is in Webb County; so that all the taxes paid on that section of the line have been allocated to the City of Laredo.

Q. All right; proceed with your explanation, Mr. Lewis.

A. The next item is New Business Expense. The New Business Expense shown on Plaintiffs' Exhibit 8 amounts to $2,805.19; the New Business Expense as shown by Defendant's Exhibit 3 amounts to $6,077.61, or a net difference of $3,272.42. In the Defendant's Exhibit 3 the item of $6,077.61 New Business Expense is made up as follows: Laredo District New Business Expense, $3,288.22; San Antonio District New Business Expense, $21.15; Houston General Office New Business Expense, $2,768.24. There is

included in Plaintiffs' Exhibit 8 only an allocated part of [fol. 962] the Laredo District New Business Expense. The San Antonio District is a transmission district, and could not have customers within the city limits of Laredo, and for that reason I have not included any part of the San Antonio District New Business Expense within the city limits of Laredo.

Q. That is the item of twenty-one dollars and——

A. $21.15. The Houston Office General Expense I have not allocated to Laredo for the reason that Laredo, being an old established town, should not share in New Business Expense to the extent that the new distributions systems that have been put in during the year. So that I feel that New Business Expenses of the Houston General Office should be allocated to those districts where new distribution plants have been set up during the period under review, or immediately prior thereto. Those two items account for $2,789.30 of the difference. The net difference is $3,272.42, leaving an unaccounted for or unlocated difference of $483.03, which is all due to difference in allocation factors.

[fol. 963] Q. All right; go ahead.

A. The next item is general office general expense, which is included on defendant's Exhibit 3 at $39,456.00. General office and general expense is shown on Plaintiff's Exhibit 8 in the amount of $27,876.42, or a net difference of $11,579.58. This difference is brought about first in the district general expense of the Laredo district. Defendant's Exhibit No. 3 includes $9,092.97, allocated to Laredo, whereas Plaintiff's Exhibit No. 8 includes $8,183.06 or a difference of $909.91. This difference is due entirely to difference in the allocation factors. The San Antonio district——

Q. I thought for general expense you used the bases of apportionment set forth in Defendant's Exhibit 2?

A. That is in the general office general expense, but not in the district general expense. The San Antonio district general expense allocated to Laredo in Defendant's Exhibit 3 amounts to $898.29 as compared to $899.45 in Plaintiff's Exhibit 8. In other words, Plaintiff's Exhibit 8 contains $1.16 more San Antonio general expense than Defendant's Exhibit 3. General office expenses I can not definitely tie down the differences until I have some information which has been requested, but I can give you the approximate figure.

Q. All right.

Mr. Bobbitt: Pardon me—when did you request that information, Mr. Lewis?

A. I requested it about ten days ago.

Mr. Bobbitt: And the gentlemen agreed to furnish it to [fol. 964] you, didn't they, and will furnish it, I am sure?

A. Yes, they will furnish it, but I have not received it at this time.

Q. What is that information?

A. Mr. Womack was asked to furnish the top starting figure of general expense charged to general expense on the general office books, account 113-38-2, and his adjustments to that total and his allocations, but I can give you the approximate differences here, as it is.

Q. All right; go ahead.

A. The transmission system general expense allocated from the Houston general office to the City of Laredo in Defendant's Exhibit 3, amount to $6,911.32. The Houston general office general expenses allocated to Laredo in Plaintiff's Exhibit 8 amount to $4,289.02, or a net difference of $2622.30. I have eliminated some general expense items in my allocation to Laredo which approximate that figure.

Q. Please state what they are.

A. I have eliminated from general expenses allocated from the general office of the transmission system—I will give you the net figures which have been allocated or would have been allocated to Laredo, had not the elimination been made, in order to reconcile with Defendant's Exhibit 3. I have eliminated law expenses in the amounts of $619.33 and $296.25 which represent the amounts cleared through the clearing accounts 150 and 154. I have eliminated management fees in the amount of $648.82. I have eliminated [fol. 965] valuation and regulatory commission expense in the amount of $440.66. Donations, in the amount of $36.53. Provision for uncollectible general office accounts, in the amount of $469.13. Another item of valuation and regulatory commission expense in the amount of $411.55. Compressor station expense in the amount of $139.22.

Q. Compressor station expense?

A. Yes, there are no compressor stations on the lines serving Laredo.

Q. And how much was that figure?

A. $139.22.

Q. This is for the year 1933?

A. Yes. There are some direct charges to account 113-38-2 after the clearings for additional general office bad debt reserves and legal expense, and I have eliminated the amount of $161.82.

Q. For both?

A. For those direct charges, yes. I do no- have the analysis here, but it is all provision for bad debts and additional legal fees that were set up after the books were closed. Then there are two items of franchise requirements, in the amounts of $15.86 and 65 cents, which I have eliminated. The total eliminations of the transmission district amount to $3,239.82. In Defendant's Exhibit 3 there was eliminated the item of provision for uncollectible accounts which on my computations would have been $469.13; so that my eliminations exceed the eliminations made in computing De- [fol. 966] fendant's Exhibit 3 in the amount of $2,769.69. The net difference in the transmission system general expense prorated from the general office amounts to $2622.30 so that all of the difference except approximately $147.00 has been accounted for.

I believe I stated that there was a difference of $8048.53 in the amount of distribution system general expense prorated from the general office. That difference is also explained principally by the elimination of certain items which I will give you. Law expense $1,745.19 and $1,551.28. Supervision and consultation, fees, $1,828.31. Valuation and regulatory commission expense, $1,238.47 and $1,079.80. Donations, $102.93. Provision for general office uncollectible accounts, $1,321.97. The total eliminations for the distribution system amount to $9,323.93. In the preparation of Defendant's Exhibit 3, there was eliminated from the general expense the item of uncollectible accounts, which under my computation would amount to $1,321.97.

Q. That is the general office?

A. Yes. Making a net elimination which was not made in Defendant's Exhibit 3 of $8,001.96, which accounts for all except $47.00 of the difference. I believe that concludes the explanation of differences.

Q. Now Mr. Lewis, you have been on the company's books, both at Laredo, San Antonio and Houston a number of times in the course of your work in connection with this case, have you not, sir?

[fol. 967] A. I don't recall that I have ever done any work in San Antonio or Laredo—well, I was in Laredo a few days too, but I spent considerable time in Houston.

Q. And during the course of your examination have you been refused access to any records which you knew were there and which you could see?

A. No, I was never refused any records that I thought were there. There were some things we could not find in those older records, but everything that was available, I am sure was made available to me.

Q. And have you been courteously treated at all times?

A. Yes.

Q. And as a matter of fact when you first came there, weren't you just given the free run of the books of the company?

A. Yes.

The Court: Is there any question about that, about the witness having been furnished any information he wanted to get?

Mr. Bobbitt: No, sir; your honor, there is not.

Mr. Coates: I don't know but what the implication of Mr. Bobbitt's question——

The Court: I don't believe they intended to make any implication, but if there has been or is I will then let you go into it.

Mr. Bobbitt: There has not been any such, I don't believe.

[fol. 968] The Court: I have not heard any.

Q. Now, Mr. Lewis, why did you eliminate from transmission system general and distribution system general the items of law expense?

A. Because the items of law expense were some several thousand dollars more than they have been in prior years, and I have connected that law expense naturally with the valuation and regulatory commission expense.

Q. Did you find that any of the law expenses distributed to these properties had not been actually incurred?

A. I did not even check to see whether they had been incurred or not.

Q. And why did you eliminate the valuation and regulatory commission expense items?

A. Because that is an unusual expense that would not normally be incurred every year.

Q. Did you attempt to ascertain the total amount of valuation and regulatory commission expense and law expense attributable to this rate controversy?

A. I did not. I might add, Mr. Coates, that that expense has been charged to a number of accounts on the company books, both capital and operating accounts, so that to determine the total that was paid for this particular case, I do not believe you would ever get it all together, and I believe that there will still be left in the accounts a considerable part of the expense of this case.

[fol. 969] Q. But did you make any attempt to first ascertain the total amount of law and regulatory commission expense which had been incurred in connection with this investigation, and then distribute that expense over a period of years?

A. No, sir; I have not.

Q. And do you know whether the amounts which you have eliminated here amount to say one-tenth or one-fifth of the total law and regulatory commission expense?

A. No sir.

Q. Incurred in connection with this investigation?

A. No sir.

Q. But as I understand it, what you have eliminated is all the law and regulatory commission expense which you found charged for this particular period?

A. In this particular general office account.

Q. In the general office account. Then you have made no attempt to do what is referred to in accounting parlance, to determine the amount of the law and regulatory commission expense and spread it over a period of years so it might be amortized by annual charges to operating expenses?

A. No. As I stated, that expense has been charged to numerous accounts on the books of the company, both operating accounts and capital accounts, and it would have required a considerable period of time to collect it all and determine just what the total is, and there is still in these accounts some of the expense attributable to this case.

Q. How much?

[fol. 970] A. I don't know how much, but there are items of traveling expense and some of the salaries of the gen-

eral office employees whose time has been devoted to this, and it would not be practical to attempt to collect it all.

Q. But you are unable to state how much is left in the operating expenses for this particular period which would be attributable to this particular investigation?

A. Yes, I am unable to say that.

Q. Now, isn't it a fact, Mr. Lewis, that that part of regulatory commission expense or valuation expense which was attributable to the making of the inventory of property in this case was the expense which was capitalized?

A. I don't know whether it would include all of the inventory expense or not, but I know there was a considerable portion of that inventory expense capitalized.

Q. And didn't you find the expenses attributable to mapping and inventory was capitalized on the theory that an inventory was a part of the property of the company?

A. As I stated, I do not know that the mapping and inventory expense was the portion that was capitalized. I know some part of it was capitalized, but I do not know what part was capitalized and what part was charged to operating expenses.

Q. You may have answered this question, but I will ask it once again and then leave it. You are unable to state whether the item regulatory commission expense and legal expense shown in this statement amount to less than or [fol. 971] more than one-tenth of the total legal and regulatory commission expense attributable to this investigation?

A. No, I can not answer that.

Q. And by the statement, I mean the defendant's Exhibit 3, being the operating statement for the year 1933.

A. I don't know what portion it would be.

Q. Do you regard it as proper accounting practice and recognized accounting practice to take an item such as regulatory commission expense, including both legal and other costs of a regulatory investigation, and spread that expense over a period of years and charge it to operating expenses in equal amounts over that period of years?

A. I consider it good accounting practice to take any unusual item and amortize it over a period of years, and I consider this an unusual item.

Q. Then if actually the amounts charged here for this operating period amount to, say one-tenth of the total regu-

latory commission expense in connection with this investigation, you regard that as in accordance with good accounting practice?

A. Well, I would not tie myself to one-tenth.

Q. Well, one-fifth?

A. Well, I would not tie myself to that, either.

Q. What period of years would you take?

A. That is, for rate purposes—that is a matter for the courts to decide.

Q. I agree with you entirely on that, and I am asking [fol. 972] you about the correct and approved accounting practice.

A. The correct accounting practice would be to charge it off over a specified period, and ten years would be somewhere in the neighborhood of the correct period to charge.

Q. Now, Mr. Lewis, you have stated in your testimony that you eliminated the operations—that is, the operating expense of the Jennings-Roma line; is that correct?

A. In connection with which exhibits?

Q. In connection with plaintiff's Exhibit 8 and the year 1933?

A. I attempted to eliminate in that exhibit everything except the expenses applicable to the city of Laredo.

Q. And have you in your working papers the transmission system expense which you eliminated which is attributable to the Jennings-Roma line?

A. Do you mean do I have my allocation of the total expense as to the various towns? I did not eliminate—that is, there was not a direct elimination. I have allocated part to Laredo and part to Monterrey.

Q. Mr. Lewis, what I want to know is for the year 1933, what are the operating expenses attributable to the Jennings-Roma line on your bases of apportionment?

A. The transmission system operating expenses, and this includes gas purchased, operating expenses and everything——

Q. No, I want it exclusive of gas purchased. Transmission system operations, maintenance and general and any other item of operating expense, exclusive of gas purchases.

[fol. 973] A. I will first enumerate the items to be included in the total: Transmission operating expense; transmission maintenance expense; district general expense;

taxes; gathering system expense; general office general expense; and maintenance of general structures.

Q. All right.

A. That represents the total transmission system expense allocated to the Jennings-Roma line, exclusive of gas purchases.

Q. That's right—exclusive of gas purchased.

A. The total is $49,518.37.

Q. Now, by accounts, if you please?

A. Transmission system operating expense, account 113-24, is $13,089.97. Transmission system maintenance expense, account 113-25, $9,057.21. District general expense, prorated, account 113-36, $1,059.77. Line rental, $13,800.00. Taxes, $3,802.95. Gathering system expense, $3,654.94. General expense, general office, $4,569.24. Now that item, I believe, is before any of the eliminations I mentioned while ago.

Q. You mean before any eliminations from the Jennings-Roma line——

A. Just a minute; I had better check that—No, that is after eliminations.

Q. After the eliminations are made?

A. Yes.

Q. Then that item is comparable to the items of transmission expense which you contain in your operating statement for the year 1933, for the lines serving Laredo?

[fol. 974] A. Yes. Now, maintenance of general structures was $484.29.

Q. Do you know what that maintenance figure is?

A. It is maintenance of the telephone system.

Q. Now one of your bases of allocation, I believe Mr. Lewis, or in several of your bases, you used lineal and three inch equivalent miles, didn't you?

A. I used that basis only in connection with the general expense prorated.

Q. Now, in using that basis of allocation, did you ascertain the lineal mileage of the Jennings-Roma line?

A. I simply took the mileage figures furnished me by the company.

Q. And what was that lineal miles of line from Jennings to Roma?

A. The transmission system of the old South Texas Gas Company is broken down into four sectors: the Monterrey

sector, lineal miles of 47.31, and three inch equivalent miles of 188.29.

Q. All right, now, what is the lineal and three inch equivalent mileage of the transmission lines in the Laredo sector, taking gas to the Laredo city gate?

A. The Laredo sector line as furnished by the company, the lineal miles is 78.97, and the three inch equivalent miles 178.79.

The Court: That is the Laredo sector of what line?

A. That is the lines designated as the Laredo sector, and which takes in all the lines which serve the City of Laredo.

The Court: All right; I understand it now.

A. Now, as I stated, I have used those allocation factors only in connection with the general expense.

[fol. 975] Q. And have not used them in connection with the transmission system operations and maintenance?

A. I have not.

Q. Why not?

A. Because I do not think there is any relationship in that particular district—apparently there was no relationship between the lengths of the line and the operating expenses.

Q. What basis of apportionment did you use for transmission system operations and maintenance in apportioning or distributing expenses—that is, transmission system operating expenses between the lines in the Laredo sector, and the Jennings-Roma line?

A. I allocated the operating expenses of the transmission lines in the South Texas area on the basis of the volume of gas transported. I did not make any segregation as between specific lines. My method attached to each cubic foot of gas transported its proportional part of the total cost of transporting the gas.

Q. And does the company on its books attempt to distribute the expenses as between these lines to which you refer?

A. There is no segregation on the books, as between the Jennings-Roma line and the Laredo line.

Q. Do you think it would be practical, as a book-keeping matter, for the company to attempt to do so?

A. I believe if the company had found it a practical thing to do, they would have done that. I am not familiar

[fol. 976] enough with the physical operations of the properties to say whether it would be practical or not.

Q. Well, from what you have been able to learn from your examination of these accounts, do you regard it as a practical thing to do?

A. It seems, from my examination of the accounts, that an employee may be used one day on the Laredo sector lines and another day on the Monterrey sector lines, and every other item of expense is handled in the same way, so that it would be necessary, if you were to keep it accurately, to allocate every man's time every day on some basis.

Q. And wouldn't that result in a large increase of expense?

A. Well, I don't know that it would. It presumably might increase your accounting expense.

Q. It would result in more book-keeping?

A. It would require more book-keeping.

Q. And more book-keeping normally means more book-keeping expense does it not?

A. Yes.

Q. Now, let me ask you this question: Suppose that Jennings-Roma line was ready to serve, but not sending down any gas at all. In your judgment, would transmission system operations and maintenance expense be incurred?

A. If you were not even using the line, but it was just there?

Q. No, ready to serve, but not sending down any gas.

Mr. Bobbitt: What do you mean by ready to serve?

[fol. 977] Q. I mean standing there ready to turn the valves on the well-heads and send down gas, but not sending any gas.

A. I can not say, but I can't see there would be any operating expense to the line if you were not using it at all.

Q. My question is, if the company was standing there, ready to serve—that is, ready to send gas down this Monterrey line at any time it was demanded, but was not sending any gas down that line, would the transmission operations and maintenance go on just the same?

A. I don't know whether they would or not.

Q. You don't know about that. Suppose that line was flowing reasonably full of gas; would there be a substantial increase of transmission system operating and main-

tenance expense over the amount of those two expenses which would be incurred if the line was ready to serve but not sending down any gas?

A. Read that question. (Question is read.) You stated in one instance it was reasonably full, and at the end of the question it was not sending any.

Q. I am asking you to make the comparison between the two.

A. One if the line was reasonably full, and if it was not taking any?

Q. Yes.

A. I don't know what the difference in expense would be.

Q. You are just unable to state about that?

A. I think there have been several witnesses interrogated along the same line.

[fol. 978] Q. But is it your testimony that in the case of these lines, the length of line to be operated has no relationship whatever to the proportionate amount of operating expenses incurred?

A. I would not say that it has no relationship whatever, but it has no definite relationship, and it might vary in different districts and under different operating management or practice.

Q. Is it your testimony that in the case of the operation of this line, the transmission system operating expenses would vary more directly in proportion to the volumes of gas that were passing through the line than they would in proportion to the length of the line?

A. I based my allocation factor, after a considerable study of all the known facts down there, in attempting to arive at a fair allocation factor, and a study of the transmission system operating and maintenance expense for a five year period, which shows a close a very close relationship between the volume of gas transported and the cost of operating and maintaining the lines in that particular area.

Q. Now, have you ever made a similar study in the case of any other gas transmission lines?

A. No, because I was interested in this particular district.

Q. I mean, ever in your experience, have you made a similar study?

A. If I had found, in some other district——

Q. Wait a minute—read the question please. (Question is read.)

A. I do not believe I have ever made a study of that kind on any other line.

[fol. 979] Q. Now, have you ever made a study with reference to transmission system maintenance expense, to see what factors govern the amount of that expense, other than in the case of this particular line?

A. No, sir.

Q. Now, Mr. Lewis, if you had found that this line was not transporting any gas down to Roma, would you then have put all this transmission system operations and maintenance expense on to the lines serving Laredo?

A. I don't know, Mr. Coates, what I would have done under different conditions. I would have had to review the conditions and weigh all the factors and then decided what to do.

Q. But don't you regard the possible correspondence between volume deliveries through that line and transmission system operations and maintenance in the particular periods, as purely fortuitous?

A. If it had been one year or two years, it might have been, but it would hardly be just an accident that those two items were so closely correspondent in a five year period.

Q. Then it is your statement that in connection with these lines, transmission system operating expense varies most closely in proportion to the volumes of gas put through that line?

A. It is my testimony that in this South Texas area, for the last five years the operating and transmission system expense of maintenance has varied more closely in proportion to the volumes of gas than any other factor that I could find.

[fol. 980] Q. And is it likewise your testimony that in the case of these lines, the transmission system maintenance expense would vary most closely in proportion to the volumes of gas put through that line?

A. In this particular district, yes.

Q. And do you know what are the operations which make or cause maintenance expense?

A. Maintenance expense, or that is the repair end of maintenance would be caused by any number of conditions.

Q. Well, has it got any relationship to the volume of gas that passes through the line?

A. In this particular area, as I have testified, there has been a close relationship between the two.

Q. But, just as a practical proposition, has the expense of maintenance on a particular line—is it a function of or is it related to the volumes of gas which have been passing through that line?

The Court: I believe he has answered that as nearly as the witness indicates he can, by telling you it is more closely related than any other factor he can find, in his judgment.

Q. Now, does gas wear out the line, as it passes through it?
A. I don't think it would wear it out appreciably.
Q. And isn't the amount of maintenance, that is, the cost of a particular maintenance job, very largely a function of the size or capacity of the particular line?
[fol. 981] A. It might be influenced by the size or the capacity but certainly the cost of maintaining lines would not be in direct proportion or ration to the capacity or size of the line.
Q. Suppose you had to put a new dresser coupling on a twelve inch line; would that cost more per dresser coupling than it would in the case of a six inch line?

Mr. Fitzhugh: May it please the court, we do not have any objection to counsel asking anything of this witness that an accounting witness may be expected to know, from a study of the books, but all these questions pertain to operations and are engineering questions and operations questions.
The Court: Well, I believe a six year old child can answer that question, and I don't believe it takes an expert engineer or an expert book-keeper either to answer that.
Mr. Fitzhugh: Would it cost more or what it costs to put on a dresser coupling is a matter of operations and not something shown by the books.
The Court: I expect it is shown by the books, if they ever put in any down there.

A. Will you read the questions? (Question is read.) The cost of the coupling would be more. As to whether or not it would be twice as much or three times as much, I don't know. The total cost of putting in the coupling would depend on how far you had to ship the coupling and how far you had to haul it after you got it there, and various other elements in installing it and it might or might not be in proportion to the size.

[fol. 982] Q. Would the cost of that maintenance expense of that coupling have any relationship to the volumes of gas passing through that line?

A. It might or might not.

The Court: I think that is an engineering question.

Mr. Coates: He has attempted here to set up a basis of apportionment of expense as between the lines in the Laredo sector and this line that carries gas down toward Monterrey, and distributing the transmission system operations and maintenance expense on the basis of volumes of delivery by those two lines, and has stated here that in his judgment the volumes of deliveries which pass through the respective lines bear a closer relationship to the amount of transmission system operating and maintenance expense than any other factor that he could find out. Now, it is likewise in the record that the company has apportioned that expense on the basis of the length of line and capacity of line, and this is in cross examination of this witness, to determine the reasonableness of those apportionment factors, as related to the rather simple facts which relate themselves to this character of expense and make this character of expense.

Mr. Bobbitt: Now, if the court please——

The Court: Wait a minute; just let me say this, and I do not intend to comment upon the testimony of this witness at all; but this witness has testified as to what, in his judgment, has happened.

[fol. 983] Mr. Bobbitt: On five years experience, yes.

The Court: You are asking him now what in his judgment might happen. He may not know anything about it. But, I am not making any objection. Mr. Fitzhugh made the objection to the previous question, but I will let him answer the question if no one objects now. I did let him answer that previous question; now on the next question, I simply said that looks to me like a question calling for engineering knowledge. If nobody else objects, go ahead; I don't object, if nobody else does.

Mr. Bobbitt: I just wanted to call the court's attention to the fact that he has testified, as the Court suggested, and he has made his allocations or estimates based on five years' experiences as to what actually has transpired, and as I understand it, is being interrogated about a theory, what might have happened. He is being asked to assume——

The Court: Not that might have, but that might probably in the future. However, if there is no objection, I have none. I thought Mr. Fitzhugh was objecting.

Mr. Fitzhugh: I was, and meant to object to all these questions that ask this witness engineering questions.

Q. Well, just to wind the thing up, Mr. Lewis, it is your testimony that in your judgment, based on your studies, that transmission system operations and maintenance expense vary as between the Jennings-Roma line and the lines leading to Laredo, most closely in proportion to the volume [fol. 984] of gas delivered through those respective lines?

A. My testimony was that the transmission system operating expense and the transmission system maintenance expense in the South Texas Gas Company area, have varied during the last five years in almost direct proportion to the volume of gas deliveries.

[fol. 985] Q. And what five-year period did you study, Mr. Lewis?

The Court: Wait just a moment. I didn't understand that. Didn't you say that that factor and its variation was more closely related to the volume of gas transported than any other factor you found?

A. Yes, sir.

The Court: That is what I thought you said.

A. But I have not testified as to segregating any two lines; I have taken the South Texas Area as a whole and have allocated that on the basis of volumes of deliveries, because the transmission system operating expense and maintenance expense during the last five years have varied more nearly in proportion with volume deliveries than any other factor.

Q. That is, for the total area?

A. The total area.

Q. Now, as between the transmission lines taking gas to Laredo and the transmission lines taking gas from Jennings to Roma, have the transmission system operations and maintenance expense of those two lines varied most closely in proportion to the volume of deliveries by those respective lines?

A. The operating expenses of those two sectors have not been kept separate; they are all in one set of accounts, and so far as I know there has never been any allocation or [fol. 986] any segregation of the costs of one line as against

the costs of the other. Had there been such segregations made, it would not have been necessary to allocate these expenses.

Q. But what you have done is to take the total of the transmission system operations and maintenance expense of that area, which includes the expense both of the lines leading to Laredo and the line leading from Jennings to Roma, and have found that the total amount of transmission system operation expense for all those lines through the years has varied up and down with the total volumes of gas delivered through those lines?

A. That is correct; and I might add that that district includes also a short line to Bruni, and another line to Hebbronville.

Q. All right. Now, you are using this basis of apportionment, however, in an attempt to get a fair and correct distribution of this character of expense, as between the lines leading to Laredo, and the line flowing gas in the opposite direction, that is, from Jennings to Roma, are you not?

A. I have testified, Mr. Coates—Read the question. I thought I had answered your question.

Q. All right; read the question.

(Thereupon the Reporter read the last preceding question [fol. 987] as follows: "Q. All right. Now, you are using this basis of apportionment, however, in an attempt to get a fair and correct distribution of this character of expense, as between the lines leading to Laredo, and the line flowing gas in the opposite direction, that is, from Jennings to Roma, are you not?")

A. I have used this method of allocation in order to attach a part of the cost, or attach the cost of transporting the gas and the gas itself wherever the gas goes. We have not only the line from Roma to Monterrey—I mean from Jennings to Roma, and the line—the Laredo sector lines, which delivers gas to six towns—no, four towns, the Bruni line and the Hebbronville line,—all of those expenses are contained in one set of expense accounts; there has never been any effort on the part of the Company to keep the expenses of any particular line separated from another.

Q. All right; let me ask you this question—I thought it was included in my other question; it may be that it is not.

You are using these volume deliveries bases of apportionment in an attempt to separate and segregate transmission system expense of the lines leading to Laredo from the transmission system operations and maintenance expense of all other lines in that area which do not serve gas to Laredo, are you not?

[fol. 988] A. The operating expenses are kept so as to include the Laredo line and the Roma line and the Hebbronville line and the Bruni line; so that if we are to determine what the operating profits are in Laredo we have to allocate a part of that total cost to Laredo.

Q. All right.

A. And for the purpose of making that allocation I have used the basis of the volume of gas deliveries at the various points in that area.

Q. And have done that for the purpose of separating transmission system operations and maintenance expense of the lines taking gas to Laredo from the transmission system operations and maintenance expense of lines not taking gas to Laredo, but operated by the same company?

A. I testified that I included in that allocation the line from Jennings to Roma, the Hebbronville line, the Bruni line, and the Laredo sector line.

Mr. Coates: Please read the question, Mr. Reporter.

(Thereupon the Reporter read the last preceding question, as follows: "Q And have done that for the purpose of separating transmission system operations and maintenance expense of the lines taking gas to Laredo from the transmission system operations and maintenance expense of lines not taking gas to Laredo, but operated by the same company?")

[fol. 989] Q. Now, I believe that is capable of a direct answer, Mr. Lewis.

A. I have answered the question as best I can, that I have allocated all of the transmission operating and maintenance expense in the South Texas area in the proportions that the volumes of deliveries bear, and that in that area there are included transmission lines fom Roma to Jennings, and the Hebbronville line and the Bruni line and the Laredo sector lines.

Q. Well, isn't the practical effect of your answer that you have applied this apportionment factor——

Mr. Bobbitt: Hasn't the witness answered that?

Mr. Coates: Well, I don't think he has.

Mr. Bobbitt: He is asking now the practical effect of his answer.

The Court: Gentlemen, if you are objecting to that question, the practical effect and so and so, I will sustain it. Now, the other question, as to whether he has answered it correctly or not, that is for the jury to know. He says he has answered it the best he can.

Q. But in this case you are attempting to segregate by means of an apportionment factor the transmission system operations and maintenance of the lines taking gas to Laredo from the transmission system operations and main-
[fol. 990] tenance of all other lines operated by the same company but not taking gas to Larredo, are you not?

A. No, I have said that I have taken all deliveries in the district, irrespective of where the lines were or where they were going, on the basis of volume deliveries. I have not attempted to segregate any particular line from another line, but I have attached to each cubic foot of gas transported through the lines in the South Texas gas area its proportional part of the total cost of operating the transmission lines.

Q. You mean an equal part of that transmission system operations expense to each thousand cubic feet of gas?

A. Yes, sir.

Q. All right. Now, in your studies over this five-year period have you attempted to ascertain whether the transmission system operations and maintenance of the Jennings-Pescadito line and the Carolina-Tex-Laredo line vary in proportion to the total amount of transmission system operations and maintenance in accordance with M. C. F. deliveries?

A. I have told you, Mr. Coates, that there was no segregation of the expenses as between the Pescadito-Jennings line and the Carolina-Tex-Laredo line and the Roma-Jennings line on the books of the Company—absolutely no figures to make a study of that kind upon.

[fol. 991] Q. And all you have done is to find that the transmission system operations and maintenance for all these lines over a period of years were higher when the volumes of gas deliveries were high, and were lower when

the volumes of gas deliveries were low,—isn't that correct?

A. I have found that, yes.

Q. And it is on the basis of that study that you say that in your judgment transmission system operations and maintenance should be apportioned to the line serving Laredo on the basis of volume of deliveries?

A. I have allocated, and I believe it is a correct allocation, to the city limits of Laredo a proportional part of the transmission system operations and maintenance expense, that proportion being based upon the percentage of the gas used in the City of Laredo to the total gas transported in the entire district.

Mr. Coates: Now, read the question again.

(Thereupon the Reporter read the last preceding question as follows: "Q. And it is on the basis of that you say that in your judgment transmission system operations and maintenance should be apportioned to the line serving Laredo on the basis of volume of deliveries?")

A. I have said time and time again that I have not allocated these expenses to any particular lines. We have four or five different sectors in that area, and I have not at- [fol. 992] tempted to allocate to the sectors. I have, however, allocated to the City of Laredo a proportional part of the transmission system operating and maintenance expense.

Q. Now, what per cent of the transmission system operations and maintenance expense incurred for the Jennings-Roma line, the Jennings-Pescadito line, and the Carolina-Tex-Laredo line have you allocated to the Jennings-Roma line?

A. I didn't understand the question.

Mr. Coates: Read it to him.

(Thereupon the Reporter read the last preceding question as follows: "Q. Now, what per cent of the transmission system operations and maintenance expense incurred for the Jennings-Roma line the Jennings-Pescadito line, and the Carolina-Tex-Laredo line have you allocated to the Jennings-Roma line?")

Mr. Bobbitt: What is that. He is going around in a circle there.

A. I can't quite understand. Read it again, please.

(Thereupon the Reporter read the last preceding question as follows: "Q. Now, what per cent of the transmission system operations and maintenance expense incurred for the Jennings-Roma line, the Jennings-Pescadito line, and the Carolina-Tex-Laredo line have you allocated to the Jennings-Roma line?")

A. I have allocated to the gas deliveries at Roma a pro-
[fol. 993] portional part of the total operating and maintenance expense, which includes not only the lines you have named, but includes the Hebbronville line and the Bruni line.

Q. Then, are you unable to state the percentage of transmission system operations expense of these three lines that I have named which you have apportioned to the Jennings-Roma line.

A. Because I don't have the figures for those three lines you named, separately.

Q. You have given us, have you not, as transmission system operations expense apportioned to the Jennings-Roma line the sum of $13,089.97?

A. How much?

Q. $13,089.97.

A. Yes, sir, that is the transmission operating expense incidental to the delivery of the gas delivered at Roma.

Q. Then you have likewise given us, have you not, the transmission system operations expense of the lines leading toward Laredo, at $2,511.69.

A. No, that is the part allocated to operations within the city limits of Laredo.

Q. And what is the total figure for transmission system operations of the lines taking gas to Laredo?

A. I don't have that total.

Q. You haven't got it in your work papers?

[fol. 994] A. No, sir, as I have testified, first, I had to start with the transmission operating expense of the San Antonio district, which includes the old South Texas Gas Company area, and lines from the Bruni field—well, that is the Southern Gas Company, from Refugio to New Braunfels and on north and around to Lockhart, somewhere in that neighborhood. First, I had to take the transmission system operating expense of that district and allocate it, first, as between the old South Texas Gas Company area and the old San Antonio are-, and after eliminating the

$13,800.00 pipe line rental for the year, I had a total expense in that San Antonio district of transmission system operations of $35,828.40.

Q. All right.

A. I have allocated that figure on the basis named several days ago as between the old San Antonio area and the old South Texas gas area.

Q. All right.

A. Allocating $19,046.38 to the old San Antonio area, and $16,782.02 to the South Texas area.

Q. All right; on what basis?

A. On the basis of the total of the two districts for the year ending October 31, 1932.

Q. All right.

A. The last year that they were separated.

[fol. 995] Q. All right; now, go on from there.

A. From that point on the part allocated to the South Texas area, in the amount of $16,782.02, was allocated to the various delivery points on the volume—on the basis of volumes of gas delivered.

Q. All right.

A. Allocating a certain part of it to the gas delivered at Roma for Monterrey, a certain part of it to miscellaneous, to various transmission lines, as well as a part of it to other towns, taking in the other six distribution points in that district, and allocating a part of it to outside the city limits of Laredo and a part to inside the city limits of Laredo. All of those allocations are based on the volumes of gas deliveries.

Q. All right. Now, then, of that total figure of $16,782.00 which you brought down to the old South Texas area, you have allocated $13,089.97 to the Jennings-Roma line, have you?

A. Yes, sir.

Q. And the remainder of that expense, amounting to three thousand odd dollars you have allocated to all the other lines in South Texas—in what you have designated as the South Texas area?

A. I have allocated it to the gas or charged it against the operations where the gas was delivered. I can not say definitely that I allocated it to the lines, because that was [fol. 996] not my method.

Q. I see. But there is about three thousand dollars of that $16,782.00 figure of transmission system operations

expense which is allocated, as you say, to the gas delivered to Laredo and to the gas delivered to such towns as Pescadito and the various towns along the Laredo-Carolina-Tex line,—is that correct?

A. I have——

The Witness: Read the question, will you, please?

(Thereupon the Reporter read the last preceding question, as follows: "Q. I see. But there is about three thousand dollars of that $16,782.00 figure of transmission system operations expense which is allocated, as you say, to the gas delivered to Laredo and to the gas delivered to such towns as Pescadito and the various towns along the Laredo-Carolina-Tex line,—is that correct?")

A. Well, that remaining part would cover the gas deliveries at Laredo, Hebbronville, Bruni, Mirando City, Oilton, and Aguilares.

Q. I see. And what is the—I said three thousand odd dollars; what is the difference between this $16,782.00 figure and the transmission system operations expense of $13,089.97?

A. $3,692.05.

Q. Now, what is the total volume of deliveries to all points in the South Texas area, which you use as a starting point in your basis of allocation?

[fol. 997] A. The total deliveries in the old South Texas gas area were 2,238,114 M. C. F.

Q. And what have you used as deliveries at Roma?

A. There was delivered at Roma 1,745,760.

Mr. Bobbitt: M. C. F.?

A. M. C. F.

Q. Leaving how much for volume deliveries to all other points?

A. 492,354 M. C. F.

Q. And what have you used for this period for volume deliveries at the Laredo city gate, or inside Laredo instead of the Laredo gate?

A. 317,071.

Q. Now, does the dollar figure $13,089.97 bear the same percentage relationship to $16,782.00 as the M. C. F. figure of 1,745,776 M. C. F. bears to 2,138,114?

A. You called one figure wrong. It is 1,745,760. Yes, that is the same.

Q. The same percentage relationship?

A. Yes, sir.

Q. What is that percentage?

A. Seventy-eight per cent.

Q. Now, refer to this map, which has been marked as Map 2. Now, what we have referred to as the Jennings-Roma line is the line running from Jennings Junction, or thereabouts, about forty-six miles to Roma on the Texas border; is that right?

[fol. 998] A. Yes, sir. I don't know the exact mileage.

Q. Well, that is the mileage—that is the lineal mileage that you gave?

A. That is approximately the figure 47.3 miles.

Q. And gas passing through that line goes approximately due south, does it not?

A. Yes, sir.

Q. And it is to gas deliveries through that line that you have apportioned these transmission operations of thirteen thousand odd dollars, is it?

A. Yes, sir.

Q. Now, the lines which lead in the direction of Laredo are the Jennings-Pescadito line from the point on the map shown as Jennings Junction, or thereabouts, to the point on the map shown as the Pescadito check meter, are they not?

A. Yes, sir.

Q. And the line leading from the check meter in the Carolina-Tex. field to the Laredo city gate?

A. Yes, they are used for Laredo.

Q. And it is to deliveries of gas through the Jennings-Pescadito line and the Carolina-Tex.-Laredo line that you have apportioned this transmission operation expense figure of thirteen thousand dollars, is it?

A. Yes, sir. Now, let me——

Mr. Bobbitt: What about the Bruni line?

A. That would get a part of the expense. That allocation [fol. 999] factor also includes gathering system expense in the Jennings field.

Q. How much?—well, we have that figure.

A. I gave that figure.

Q. Well, did that figure include any gathering system expense?

A. I don't believe it does, no, sir. No; gathering expenses are in a separate item.

Q. In other words, expressed as percentage of the total transmission system operation expenses for the three lines that I have named, 78 per cent of it has been apportioned to the gas from Jennings to Roma, and the remaining 22 per cent, without using fractions, has been apportioned to the gas delivered in the direction of Laredo on the Jennings-Pescadito line and the Carolina-Tex. Laredo line?

A. There would be a small amount in the Hebbronville line and the Bruni line.

Q. How much?

A. It is in the 22 per cent.

Q. What per cent?

A. It is very small; I don't remember what it is.

Q. Have you got it in your work papers?

A. I don't have it separated, no, sir.

Q. Well, it would be the proportion of gas deliveries to the other towns to the total deliveries in that area, would it not?

A. Yes, sir.

[fol. 1000] Q. And you have in your work papers somewhere the proportion of gas deliveries to those towns for the year 1933, have you not?

A. Yes, sir.

Q. Now, then, Mr. Lewis, have you likewise apportioned to gas delivered from Jennings to Roma 78 per cent, omitting fractions, of the transmission system maintenance expenses for the three lines, Jennings to Roma, Jennings to Pescadito, and Carolina-Tex. to Laredo?

A. Yes, sir.

Q. Would you state that in your judgment 78 per cent of the total transmission operations expenses is incurred for and attributable to the gas deliveries passing from Jennings to Roma?

A. I base my allocation on the study, as I have stated, which includes a period both before and after the Roma-Jennings line started.

Q. You have already explained fully how you did it. Now I am asking you whether it is your judgment that 78 per cent of that transmission operations expense is attributable to the operations and the gas from Roma to Jennings?

A. And I am giving you my reason for stating my opinion.

Q. All right. Will you state your opinion first and then your reasons?

A. I think 78 per cent is a proper amount to be charged to that line, because the study I have made, as I have told you, indicates a close relationship for those periods, [fol. 1001] and that covered both periods before and after the Roma-Jennings line was built and used, and at the time that the line started into operation it actually has increased the cost of delivering a thousand cubic feet of gas, or the cost of delivering a thousand cubic feet of gas to Laredo is considerably more after the Roma line was built and this method of allocation used than it was—What have I said?

(Thereupon the Reporter read the preceding answer of the witness.)

A. —before.

Q. All right. Now, Mr. Lewis, what is the transmission system operations expense per lineal mile of line which you have put against the Jennings-Roma line?

A. What is the question?

Q. The transmission system operations expense of that line per lineal mile?

The Court: Couldn't anybody figure that out by calculation?

[fol. 1002] Mr. Coates: Yes, but the figure is so striking that I wanted to use it on cross examination.

A. I have those figures and can compute the amounts.

Q. Well, it is 47.31 miles into $13,089.97, is it not?

A. It would be $13,089.97 divided by 47.31.

Q. Leaving out the decimal, give us the approximate figure.

A. I might add before I make this computation that the company's exhibit, or the basis upon which the Defendant's Exhibit 3 has been allocated, that instead of having a figure of $16,782.02 for the South Texas area, they would have a lesser figure than that—so that the comparison——

Q. But I am asking you about what you have done here—I am much obliged for the explanation, but——

A. You have asked me a number of times to make these comparisons. Now you want the total of the old South Texas area?

Q. No, I want transmission system operations expense, apportioned to the Jennings-Roma line, per lineal mile of line, and then I want it per three inch equivalent mile of line.

A. I have not checked these figures, and they may be in error, but I have for the Monterrey sector, $285.00.

Q. That is transmission operations, per lineal mile?

A. Yes.

Q. And per three inch equivalent mile, what is it?

A. I will figure that out.

The Court: We will take a recess of a few minutes, gentlemen, and you can figure that for him.

[fol. 1003] Following recess.

Q. Mr. Lewis, in order to save time, during the noon hour will you compute the transmission system operating expense, per lineal mile and per three inch equivalent mile, on the Jennings-Roma line, and also the transmission system operating expense per lineal mile and per three inch equivalent mile on the lines leading toward Laredo, or on all the other lines in that South Texas area, and will you make the same computations with respect to transmission system maintenance?

A. Yes.

Q. Mr. Lewis, it seems that both you and Mr. Womack eliminated from operating expenses an item of Thirty-Three Thousand some odd Dollars, attributable to reconditioning the Jennings-Pescadito line, the difference in the amount eliminated being approximately $500—is that correct?

A. Yes.

Q. Now, how did you make that elimination? Not why, but how? From what figure did you deduct it?

A. First I was furnished with a detailed list of materials charged to the maintenance account; not all of them, but I observed in my analysis that in particular months there were abnormal increases in the materials going into the maintenance accounts and so I selected certain items and asked that a detailed list be furnished me showing the nature of the work and where the materials went, and I started my basis of elimination from those material reports.

[fol. 1004] Q. I understand that you gave a figure of Thirty-Three Thousand odd Dollars, but from what figure did you deduct that figure of $33,000 plus?

A. Just a minute and I will give you the whole story. I believe you asked me first how I computed the $33,000 figure?

Q. No, I asked you from what figure you deducted the Thirty-three Thousand Odd Dollars.

A. There was charged to operating expense, transmission maintenance in District 70, the San Antonio district, the amount of $62,983.74, and from that figure I have eliminated for the replacement and reconditioning of the lines $33,-646.17, leaving an adjusted balance of $29,337.57 before any allocations.

Q. All right, that is what I wanted to know. Now, Mr. Lewis, I believe in your direct testimony you stated that you found on the books of the company that the properties formerly owned by South Texas Gas Company, including the transmission lines serving Laredo and the Jennings-Roma line, had been transferred to United Gas Public Service Company?

A. Yes.

Q. And did you or did you not state the amount at which those properties were carried on the books of the South Texas Gas Company, prior to this transfer?

A. I don't believe I did.

Q. Did you or did you not state that after these properties, including the Jennings-Roma line and the Jennings-Pescadito line and the Carolina-Texas-Laredo line were [fol. 1005] transferred, that those lines were set up and evaluated on the books of the United Gas Public Service Company at $934,798.02?

A. I stated that the journal voucher taking up the properties on the books of the United Gas Public Service Company charged fixed capital account in the amount of $934,-000.00 some odd.

Q. And is it your testimony that all these properties were carried on to the books of the United Gas Public Service Company at only $934,000 plus?

A. I did not analyse all of the fixed property accounts of United Gas Public Service Company, but from the information furnished me by the accounting department and the construction accounting departments, that is the total value at which they were taken over. Then there was an addition to that cost of some $55,000.00 later in the year.

Q. What was the information furnished you, Mr. Lewis?

A. It was a transcript of the fixed capital accounts, as

affecting the old District 70 of the old South Texas properties.

Q. And did you go through that carefully?

A. The transcript as furnished to me?

Q. Yes.

A. It had the same balance——

Q. I say, did you go through it carefully?

A. It did not necessitate going through at all. It was there in schedule form of the items enumerated and I made no verification of it whatever.

Q. And did that item of $934,000.00 plus, include the [fol. 1006] Jennings-Roma line?

A. That was my impression. As I said, I asked them for this information in regard to all the old South Texas Gas Company properties, and that was the information furnished me, and I made no further verification of it, but it was my impression that it included all of the old South Texas Gas Company's properties.

Q. And I believe you stated that the Jennings-Roma line—the cost of that line showed on the books of the South Texas Gas Company at $848,232 and some cents?

A. That was the first journal voucher, setting up the cost, and there were some later additions to it.

Q. Have you a description of that journal voucher, a copy of which was furnished to you, showing this entry of $934,000?

[fol. 1007] A. The description on the voucher setting up the properties recites that it is "to record acquisitions of properties, assets, and assumption of liabilities of South Texas Gas Company, under agreement dated October 1, 1932."

Q. What is the number of that?

A. I have here "J 10-156.

Q. Could that be Number "J 10-157"?

A. It is possible that I might have the wrong number here. That is just a memorandum that I have on the working paper.

Q. Did you examine that Journal Voucher sufficiently to ascertain whether at the time these properties were transferred from the South Texas Gas Company to the United Gas Public Service Company whether the United Gas Public Service Company held any of the common stock of the South Texas Gas Company?

A. As I stated, I made no verification whatever of the Fixed Capital items.

Q. Did you ascertain whether at that time the United Gas Public Service Company likewise held bonds of the South Texas Gas Company?

A. I believe they did. I made no investigation along that line, though.

Q. Well, in the transfer of properties by a company which had outstanding in the hands of another company stocks and bonds in substantial amounts, what would be the proper accounting procedure in recording the transfer [fol. 1008] of that property?

A. Well, it might be handled in a number of different ways, depending on how the stock was carried on the books of the United Gas Public Service Company originally.

Q. Well, suppose it was carried in its Capital account?

Mr. Bobbitt: Are you testifying as to what you actually found out about this, or is it some supposition as to what was done or should have been done about the stocks and bonds?

A. I think I was asked the question of what would be the normal way to take up the properties——

Mr. Bobbit-: That is just a supposition about how somebody would have handled the business. I am objecting to his asking him how he supposed they did it, or what they should have done.

The Court: The objection is sustained.

Q. Did you ascertain whether the United Gas Public Service Company held any of the common stock of the South Texas Gas Company?

A. No; I did not.

Q. Did you ascertain whether the United Gas Public Service Company held any of the bonds of the South Texas Gas Company?

A. I am sure they held some of them, although I did not make any investigation to ascertain the amounts.

[fol. 1009] Q. You say you examined the voucher in all its parts?

A. No; I didn't say that I examined it in all its parts; I said "a copy here with this voucher reference on it."

Q. Does the copy that you have disclose any common stock of the South Texas Gas Company?

A. There is an item here of re-acquired credits. I did not attempt to reconcile the Journal entries.

Q. What does your copy show there with reference to common stock of the South Texas Gas Company held by United Gas Public Service Company at the time of the transfer of these properties?

A. There are not entries to capital stock reflected in this entry.

Q. What does it show with reference to the six and a half per cent first mortgage bonds of South Texas Gas Company held by United Gas Public Service Company?

A. There is an item on this journal voucher, a credit to long-term debt of $3,715,000.00. I don't know whether that is assumption of the old South Texas Gas Company bonds, or what the nature of it is.

Q. Is it your testimony here that the properties of the South Texas Gas Company were written down and entered on the books of the United Gas Public Service Company at $934,798.02?

A. It is my testimony that at the time the properties were transferred they were charged to the Fixed Capital account on the books of the United Gas Public Service Com-
[fol. 1010] pany, as per the Journal Voucher, $934,798.02.

Q. And you give that as the result of your examination?

A. It is also the same figure reflected in the transcript of the account furnished to me, which purported to reflect all of the properties of the old South Texas Gas Company.

Q. It is your testimony here from your examination of this Voucher that this property was set up on the books of the United Gas Public Service Company at $934,798.02?

A. The voucher that I have seen and the transcript furnished me indicated that was it. There might have been some records that I did not see.

Q. You say that your notes there show no bonds?

A. I said that there was a credit on this Journal Voucher to long-term debt of $3,715,000.00. I don't know whether that is the old South Texas Gas Company's bonds that were assumed, or whether it was some additional bonds issued, or what. I made no effort to verify or analyze the entry, and when I asked for the reconcilement between the figures I was advised that such reconcilement was not available.

Q. Who advised you that?

A. I was advised that by the Accounting Department, and in going over this, particularly when I saw this entry and could not see through it all, I went to Mr. Womack, whom I assumed had gone over the same accounts.

Q. Were you shown Journal Voucher J 10-157?

A. I don't know whether I was or not. If I saw the [fol. 1011] voucher I might know whether I had seen it.

Q. I will ask you whether this purports to be a copy of the voucher (handing paper to witness)?

Mr. Bobbitt: Have you the original, Mr. Coates?

Mr. Coates: I think so. This is not the original that I am showing him. I don't know whether we have the original here or not, but we will get it.

The Court: It is now twelve o'clock. We will recess until two o'clock.

(Thereupon, at 11:58 o'clock A. M., a recess was taken until 2:00 o'clock P. M. same date.)

[fol. 1012] Thursday, March 22, 1934

Afternoon Session: 2:00 P. M.

L. O. Lewis, recalled for further Cross-examination, testified as follows:

Cross-examination continued.

Questions by Mr. Coates:

Q. Mr. Lewis, will you now give us the Operations Expense per lineal mile for the Jennings-Roma Line for the year 1933?

A. I did not have time to compute that, Mr. Coates. I was detained here about thirty minutes after Court recessed at noon.

Q. Did you make any of the computations that you were asked to make with reference to transmission system operations and maintenance expense?

A. You mean per lineal mile and three-inch equivalent?

Q. Yes.

A. No; I have not had time to make those yet.

Q. Now, Mr. Lewis, since the noon recess have you any explanation to make, other than that contained in the record with reference to your testimony with respect to the figure of $934,798.02, which you identified as the amount set up on the books of the United Gas Public Service Company, representing the book costs of the transmission properties [fol. 1013] formerly belonging to South Texas Gas Company?

A. I have no other explanation to make, other than the transcript furnished me of the properties purporting to be the old South Texas area contained that figure, and in support of that I have testified that the Journal Voucher made at the time the properties were transferred charged the Fixed Capital Account with that amount.

Q. Did the transcript and this Journal Voucher indicate to you, using your judgment as an accountant, that that was the value of these properties fixed by the United Gas Public Service Company on its books?

A. No; I don't know whether that was the amount set up for appraised value, or the amount purporting to be the costs, or addition to costs; and as I testified, I made no attempt to verify the item at all.

Q. Is it your testimony that it is either an appraised figure or the amount set up as costs?

A. It is my testimony that that is the amount that was charged to Fixed Capital at the time that the properties were transferred.

Q. And the entire amount?

A. That is the total amount that was charged at the time the properties were transferred, with the exception there was some fifty-five thousand dollars charged later.

Q. Now, you have included in your operating statement for the year 1933 one hundred thirty-three dollars and some [fol. 1014] cents for gathering system expense. To what gathering system is that one hundred thirty-three dollars attributed?

A. That is an allocation—there is carried on the books of the United Gas Public Service Company accounts Gathering System Operations and Gathering System Maintenance in the Beeville District. That District is further broken down on the Company's books to areas. In the Bruni Area of District 15 there is a total gathering system operating and maintenance expense of $3,850.99. I inquired as to what particular fields were located within the Bruni

area so designated on the Company's books, and the information I received was that the fields in the Bruni area were the gathering lines located in the Jennings Field; and I have allocated to the City of Laredo the proportionate part of the total Bruni Area gathering expense which the volumes of gas delivered to the City of Laredo bear to the total volumes gathered in that district.

Q. Have you anything in this operating statement for the year 1933 for gathering expense for the Carolina-Tex field?

A. No.

Q. And the price of gas which you set up—or which you use as a basis for computing gas purchases in the net amount of $14,997.10, that is the price paid to the well-owner for gas at the well head, is it?

A. Yes, sir. Well, not in all cases to the well-owner. Some of that gas was bought from affiliated companies, [fol. 1015] and I don't know whether they buy it from the well-owner and sell it to the United Gas Public Service Company or not; but there are two wells in the Carolina-Texas field that gas was bought from Southern Gas Utilities, and I am not sure they are the well owners.

Q. How many wells in the Carolina-Tex field, other than these two wells, did you use in this computation?

A. I have a total of nine wells.

Q. And what well head price did you use for the two wells which you designated as Company-owned wells?

A. I used a price of four cents on a 2 pound 14.7 pressure base,—one of the wells, Southern Gas Utilities A. C. de la Garza Number 1, a rate of four cents on a pressure base of 2 pounds 14.7; and the other one, Southern Gas Utilities Charles Webster Number 1, a rate of four cents, on a pressure base of 2 pounds 14.4.

Q. For the other seven wells you used the price paid the owners of those wells, did you?

A. Well, the price stated there is the price which the gas is billed to United Gas Public Service Company; and on the other wells I used the price at which the gas was billed.

Q. Do you know how the gas gets from these well heads into the main transmission line leading to Laredo?

A. Presumably through a gathering system.

Q. Have you included any expenses in this operating statement for that gathering system?

A. I have not, unless some of that district is included in [fol. 1016] the Bruni area.

Q. You ascertained, did you not, that none of that district was included in the Bruni area?

A. No; I just asked as to what areas, or what fields, were in the Bruni area, and was told it was the Bruni field; and I made no independent investigations to determine whether that was true or not.

Q. You are not absolutely certain whether some of this gathering expense is not included in this hundred thirty-three dollars?

A. No; as I stated I took the Bruni area of District 15 gathering expense to be the gathering expen-e of the Jennings Field.

Q. Do you know what is the charge for gathering expense for gas gathered in the Carolina-Tex Field for 1933, as reflected by the Company's books?

A. One cent per thousand cubic feet.

Q. How much is that in dollars?

A. I did not make the computation. There was gathered in that field on the contract pressure base a total of 500,364 M. C. F.

Q. Have you made any verification of the figure reflected in Defendant's Exhibit 3 of $3,422.53 to determine whether that is the application of one cent per M. C. F. contract price for volumes for delivery inside the City of Laredo?

A. I made a computation using the volume delivery that I gave you a few moments ago, and applied the one cent gathering charge and the allocation factor to the City of [fol. 1917] Laredo used in Defendant's Exhibit 3, and reconciled within a few dollars of the amount shown in Defendant's Exhibit 3, so that I am satisfied that the item of—$3,422.53, is it not?

Q. Yes.

A. So that I am satisfied that the item of $3,422.53 does represents the one cent gathering charge allocated to the City of Laredo.

Q. Mr. Lewis, didn't you testify before the Commission that if the gathering expense for the gathering of gas in the Jennings Field was eliminated and not charged to Laredo that, then, in your judgment, the gathering expense in the Carolina-Tex field should be included in an operating statement for Laredo?

A. No; I didn't make that exact statement.

Mr. Bobbitt: If he is going to interrogate him about what he testified to a year or two ago, I think he ought to be furnished with a transcript.

The Court: Yes; unless his recollection is clear.

A. I think that I recall my testimony before the Commission was that if the Laredo lines were to be charged a gathering charge in the Carolina-Tex Field, then it would be proper to make the same charge in the Jennings Field for the gas going to Monterrey, and credited back against the Laredo line operations. That is the substance of my testimony; it may not be exact.

[fol. 1018] Q. That is your best recollection about your testimony, is it?

A. Yes.

Q. Now, is the elimination of the amounts charged and paid for the use of the gathering system in the Carolina-Tex Field, does that represent your own judgment, Mr. Lewis?

A. Yes; after taking all the facts that I could find into consideration, I eliminated the gathering charge paid to the Southern Gas Company in the Carolina-Texas Field.

Q. To what volumes of delivery, if you used that basis, is this hundred thirty-three dollars of gathering expense which you have included, attributed?

A. That is the proportionate part of the Jennings Field gathering expense applicable to the gas delivered to the Laredo lines.

Q. And what volumes?

A. I took the total well deliveries in what you have been designating as the West Jennings Field, and found those deliveries to be 938,813 M.C.F. Now, there were some wells on the east side of the Junction from which gas was taken, but I was not positive that some of that gathering expense was not charged into the Agua Dulce District, so that I included only the wells on the west side of the field, 538,813 M.C.F. Of that amount, 27,431 M.C.F. was delivered to the Laredo lines, so that I have allocated that proportionate part to the Laredo Sector lines.

[fol. 1019] Q. That is, allocated the part that 27,431 M.C.F. bears to this figure of 538,813 M.C.F.?

A. Yes, sir.

Q. Gas delivered inside the City of Laredo for the year 1933 was what volume?

A. You mean of that 27,000?

Q. No; total deliveries inside the City of Laredo for the year 1933?

A. There was delivered to the Laredo City gate for resale within the City limits of Laredo 317,071 M.C.F.

Q. Then, even if we assume all this 27,431 M.C.F. got to the Laredo City gate, that is the maximum amount of deliveries at the City of Laredo gate that bears any gathering charge, is it not?

A. Yes, sir.

Q. In your direct examination, Mr. Lewis, you stated that in connection with volume sales to various classes of consumers inside the City of Laredo, and particularly residential consumers for the year 1933, and the twelve months ended July, 1932, you would get and put into the record the average number of residential meters for each of those periods; have you done that?

A. I have computed it; but I believe Mr. Elrod has those figures; I don't have them with me.

Q. You haven't them in your work sheets?

A. I don't have them with me; I have them at the hotel.

[fol. 1020] Q. Mr. Lewis, why didn't you make an operating statement for the calendar year 1932?

A. Why didn't I?

Q. Yes, sir.

A. Because the period ending July 31, 1932 was selected for the purpose of the hearing before the Railroad Commission, and there was no further examination made until about the first of December, 1933, and we took the last twelve months period available at that time, and did not use the calendar year ending December 31, 1932.

Q. And you have made no examination of the Company's books for the period from July 31, 1932 to the end of 1932, have you?

A. Yes; in connection with the year ended October 31, 1933, I examined the last two months of 1932.

Q. Now, for the purposes of identification, if one would want to know the operating expenses attributable to transmission system operations, in your operating statement for the twelve months ended July, 1932, that can be found on page 5 of Plaintiff's Exhibit 8, can it not?

A. That is correct.

Q. And if one wants to know your operating expenses attributable to distribution system operations for the twelve

months ended July, 1932, that can be found on page 9 of Plaintiff's Exhibit 8, can it not?

A. Yes, sir.

[fol. 1021] Q. On direct examination, Mr. Lewis, you gave some testimony with respect to amounts paid to one Banks Moreland for sand-blasting pipe; do you recall that testimony?

A. Yes; I remember that.

Q. And likewise to one Rodriguez, I think, for some work done in connection with the reconditioning of the Jennings-Pescadito Line; is that correct?

A. Yes, sir.

Q. What operations did you say that Rodriguez performed in connection with that reconditioning?

A. The cash disbursements reports indicate that Rodriguez did some ditching and back-filling.

Q. Now, there has already been some testimony in the record, and I anticipate there will be some more given by the engineers, for an account classification known as Ditching and Back-Filling. Have you made any comparison or analysis for the purpose of determining whether the operation, or what the operations are included by Mr. Greene for ditching and back-filling?

A. No, sir; I have not.

Q. And have you made any comparison with any of the figures to be introduced in evidence by any engineering witnesses on behalf of the City of Laredo with respect to the operations included in a Construction account classification Ditching and Back Filling?

A. I am not familiar with the engineering exhibits at all.

[fol. 1022] Q. Did you make any analysis or were you able to make any analysis to determine the operations and costs included in this amount paid to Rodriguez?

A. No; all that I can give you in that connection is the information contained on the Cash Disbursements Report.

Q. And you did not make what is sometimes termed a Construction Cost analysis of those vouchers for the purpose of determining the character of costs contained therein.

[fol. 1023] A. I made no analysis at all, except to note that a certain cash disbursements report would show there was paid to Rodriguez for ditching and back-filling four cents for a certain number of feet.

Q. Then you are unable to state whether that four cents per a certain number of feet contains each and all of the

elements contained in a like classification of construction expense given by Mr. Greene?

A. I am not even familiar with Mr. Greene's classification.

Q. And likewise the construction cost classification used or to be used by Mr. Elrod, engineer for the City?

A. I don't know what Mr. Elrod has in his classification.

Q. Now, in all your computations with respect to transmission expense, both in apportionments and distributing costs, have you included the Jennings-Pescadito line?

A. I haven't considered that line one way or the other in the allocation of expenses of the transmission system operations or maintenance.

Q. You say you have not considered it one way or the other?

A. Because I have allocated my expenses on the basis of volumes delivered at specific points, regardless of where it came from.

Q. Well, have you taken into account volumes delivered at points on that line?

A. On the Jennings-Pescadito line?

[fol. 1024] Q. Yes.

A. I have considered some 27,000 M. C. F. delivered from that line to the Laredo sector line at Pescadito Junction, and have also considered the volumes of gas delivered at Jennings Junction by that line for transportation to Roma.

Q. Now, in making such apportionments as you made on lineal and three inch equivalent basis, have you included that line in determining the amount of expense to be apportioned to gas delivered to Laredo?

A. I have used the lineal mile and three inch equivalent for the purpose of allocating only the general expenses.

Q. I understand that——

A. And have used for my mileage figures as distinguishing the Jennings-Roma line and the Laredo sector lines, the figures supplied by the Engineering Department, and I——

Q. And did you— Excuse me.

A. I don't know whether they have the Jennings-Pescadito line in there or not. I am assuming that it is included in that figure in the Laredo sector, although I am not sure.

Q. You didn't find out about that?

A. No, sir.

Q. Now, from New Business Expense I believe you have eliminated all new business expense shown on the books of

account either of the district or the general office, have you not?

A. No, I have— Are you speaking of the transmission [fol. 1025] or the distribution, or both?

Q. I am speaking of both.

A. I made no adjustments nor eliminations to the new business expense of the Laredo district, but have allocated the total district new business expense, a portion of it to Laredo.

Q. Now, that is the Laredo distribution district?

A. That is the Laredo distribution district——

Q. All right.

A. —and is not the San Antonio transmission district. I did not allocate that to the city limits of Laredo.

Q. That is, you did not allocate any new business expense of the San Antonio transmission district to the City of Laredo?

A. No, sir.

Q. Did you distribute any part of the general office new business expense to the City of Laredo?

A. No, sir.

Q. Either for transmission or distribution?

A. I did not allocate any of the general office new business expense to the City of Laredo.

Q. Now, did you make any analysis to determine what items of operations creating new business expense were included in the figures which you did leave in the Laredo operating statement?

A. That I did leave in?

[fol. 1026] Q. Yes; that is, how much for advertising, how much for salaries, and how much for rentals, and so forth.

A. I have that information here, if I can find it. (Witness refers to data.) I have a summary analysis of new business expense for the district, but I have not allocated each of the sub-accounts to Laredo. I have just applied my allocation factor to the total, so that the figures I am giving you are the total new business expenses for the Laredo district.

Q. And that is the Laredo distribution district, which includes which distribution systems?

A. It includes the distribution systems at Laredo, Aguilares, Oilton, Mirando City, Bruni, Hebbronville, and Roma.

Mr. Bobbitt: What are those figures?

A. There is included in this account: rentals, $162.50; advertising supplies and expense, $1,743.86; new business management and salesman salaries and expense, $1,688.93; demonstrations, $69.25; other new business expense, $714.68; less transfer to merchandise and jobbing accounts, $390.60,—making a net of $3,988.62. That is the Laredo district total new business expense.

Mr. Bobbitt: What is that total—what is the amount of that total?

A. $3,988.62.

Q. Now, do you know how that figure for rentals was obtained?

[fol. 1027] A. I don't know how it was obtained; it is a part of the rent each month charged to this new business department, and the rest of it is charged to other departments.

Q. On what basis, do you know?

A. I don't know.

Q. Do you know whether it is on the basis of floor space occupied by the new business department?

A. I don't know what basis is used.

Q. And this item of advertising, $1,743.86, do you know what was the advertising appropriation for advertising in the Laredo papers for the year 1933?

A. No, sir, I don't.

Q. Have you made any attempt to analyze that?

A. No, sir.

Q. Do you know whether more or less was spent for advertising inside the City of Laredo than the figure $1,743.86?

A. No, sir, I don't know.

Q. Do you know——

Mr. Bobbitt: Are you separating that. Do you mean advertising, now, for merchandising or the ordinary gas business, Mr. Coates? You don't differentiate there.

Mr. Coates: I am asking him about advertising.

Mr. Bobbitt: Well, what kind of advertising? Advertising a merchandising account or for the promotion and de-

[fol. 1028] velopment of new business for the use of gas?

Mr. Coates: Well, I assume if he doesn't know about any of these advertising figures he doesn't know what is contained in any of them. If he knows what the amount of the advertising appropriation for any purpose was in Laredo for the year 1933, I assume we can get down to your question.

Q. Do you know what that figure is?

A. I don't know what the appropriation was.

Q. And do you know what the actual expenditure for advertising was in Laredo for 1933?

A. I know the amount charged for advertising in the Laredo district. Whether they spent more or less than that amount, I don't know.

Q. Do you know whether that includes all the advertising done in that district?

A. I don't know.

Q. Now, you know that in that account there is a credit to merchandising and jobbing of three hundred and ninety dollars and may be some cents. Do you know the reason for that credit?

A. Well, that is credited on the theory that a part of the new business expense should be chargeable against the merchandising and jobbing operations and each month a per- [fol. 1029] centage of the sales of merchandising and jobbing is transferred from this new business account to merchandising and jobbing expense.

Q. And that represents the judgment of the Company, or at least as reflected by its books, as to the amount of advertising expense attributable to merchandising and jobbing, or rather new business expense?

A. I suppose it is the judgment of the Company. That is the practice—the accounting practice.

Q. Now, do you know what were the activities of the general office new business department in the Laredo distribution district for the year 1933?

The Witness: Will you read the question, please?

(Thereupon the Reporter read the last preceding question, as follows: "Q. Now, do you know what were the activities of the general office new business department in the Laredo distribution district for the year 1933?")

A. Only in a general way. I wasn't in Laredo.

Q. Do you know whether any services were rendered or attempted to be rendered, at least, in that area by the general office new business department for that period?

A. No, I don't know.

Q. In the normal use of the term "new business expense", do you understand that, as an accountant, to mean expense

incurred solely to get new business, or expense incurred [fol. 1030] both to get new business and retain what business you have got?

A. Well, that account would be presumed to cover the Company's advertising cost, whatever the purpose of that advertising might be—the development of business.

Q. And that expense is incurred alike, is it not, to add new business and to retain the business you have?

A. I don't know what the purpose of the Company might be.

Q. Well, I am talking about in the ordinary accounting significance of the term.

A. Well, it would be hard to distinguish between expenditures paid for the purpose of acquiring new business and those paid for the purpose of keeping what business you have. I don't know whether you could draw any line or not.

Q. Well, I am not asking you to do that; I am asking you whether in the ordinary accounting meaning of the term that expense does not cover both those functions—that is, the function of adding new business or adding business to take care of the turn-over business, and likewise to retain the business that you have?

Mr. Bobbitt: If the Court please, it seems to me, as an accounting proposition, that all the witness can testify to is what the records and books show. I don't think he should be expected to——

The Court: Well, I think this witness has probably [fol. 1031] qualified as an expert accountant, and if I understood his question he is asking him for his opinion as an expert.

Mr. Bobbitt: He is asking what the Company had in mind when they spent so much money.

The Court: Well, read the question. Maybe I misunderstood it.

(Thereupon the Reporter read the last preceding question, as follows: "Q. Well, I am not asking you to do that; I am asking you whether in the ordinary accounting meaning of the term that expense does not cover both those functions—that is, the function of adding new business or adding business to take care of the turnover business, and likewise to retain the business that you have?")

The Court: The question clearly calls for an expert opinion from an accounting expert. He is asking for his opinion as an accountant.

Mr. Bobbitt: Well, if he knows—yes, sir.

A. Well, I would say that in a business of this type the primary purpose of new business expenses, as the term is used here, is to acquire new customers. It is somewhat unlike a store that might advertise special sales and bargains each day to keep the old customers coming back and to get new ones in, or a concern which might be losing customers [fol. 1032] because they were going to some other place, and I would say that this expense in the ordinary accounting sense would be expended by utilities primarily for the purpose of adding new business.

Q. You think that is its primary purpose. Do you think it is its sole purpose?

The Court: Now, wait just a minute, Mr. Coates. I think you are getting as far afield as Mr. Bobbitt thought you were a while ago. I let you ask him as to the accounting sense, and now you say is that the sole purpose.

Mr. Coates: Yes, and he said it was the sole purpose.

The Court: From an accounting standpoint.

Mr. Coates: And I am still asking him, did you mean to include that.

The Court: Well, if you don't think he has already answered it, I will let you ask it and confine it to an accounting standpoint.

Mr. Coates: All right.

The Court: If you will read the previous answer I think you will see he has already answered it.

(Thereupon the Reporter read the answer referred to, same being as follows: "A. Well, I would say that in a business of this type the primary purpose of new business ex- [fol. 1033] penses, as the term is used here, is to acquire new customers. It is somewhat unlike a store that might advertise special sales and bargains each day to keep the old customers coming back and to get new ones in, or a concern which might be losing customers because they were going to some other place, and I would say that this expense in the ordinary accounting sense would be expended by utilities primarily for the purpose of adding new business.")

The Reporter: The last question you asked, Mr. Coates, was: "Q. You think that is its primary purpose. Do you think it is its sole purpose?"

Q. In the ordinary accounting significance of the term.

A. No, I wouldn't say that it was the sole purpose, but I think that it is the primary objective.

Q. Now, you have likewise eliminated from expenses certain items of Law Expense for the year 1933. How much Law Expense, if you recall, have you left in this operating statement for 1933?

A. I have eliminated all of the Law Expense prorated from the Houston general office.

[fol. 1034] Q. Well, how much have you left in?

A. I have left none of the Houston general office in, and I am not sure whether there is any legal expense in the district general expense or not; I can look that up in my papers that I have at the hotel; I am not sure right now.

Q. You don't know whether any fees paid to lawyers are carried on the district payrolls, do you?

A. On the payrolls?

Q. Yes.

A. No, I don't believe that there are any carried on the payroll; there may be.

Q. Well, just to get the exact figures, as I recall, before lunch you eliminated from the operating expenses for 1933 law expenses in the sum of $4,112.04, did you not?

A. Just a moment. I will have to look.

Q. I will give you the items when you turn to the page.

A. The total law expense items in both distribution and transmission?

Q. Yes. Here are four items, Mr. Lewis, if you want to take them down for the purpose of checking: $619.34, $296.25, $1745.19, and $1551.28. You had better add them up, because that is my mathematics and I can't add very well.

A. What total do you have?

Q. $4212.04.

A. I have five cents.

[fol. 1035] Q. $4212.05?

A. That is the figure I have, yes, sir.

Mr. Bobbitt: He said first $4112.04.

Q. Now, Defendant's Exhibit 3 contains for law expenses $4438.00, does it not?

A. $4438.00, yes.

Q. And the difference between the amount that you have eliminated and the amount shown in Defendant's Exhibit 3 is $225.96, is it not?

A. It is approximately that figure, yes.

Q. It is ninety-five cents. Now, are you able to point to any amount over and above $225.95 that you have included in the operating statement for 1933 as legal expenses attributable to these properties for the year 1933?

A. Not at this time. I have my detailed expense papers down at the hotel, and I will have to get those figures for you.

Q. Now, does this represent your accounting judgment as to what the amount of legal expenses for these properties for this year should be?

A. It was my opinion that the greater part of those fees were in connection with valuation and regulatory commission expenses.

Q. What do you base that opinion on, Mr. Lewis?

A. Well, I knew that there were attorneys' fees paid in connection with these items, and it was my understanding [fol. 1036] that some of those legal fees were charged to regulatory commission expenses and some were charged to law expenses, and there was a decided increase in the amount of law expenses as between this year and the prior year.

Q. And did you make an anlysis of the charges to determine to what legal services those charges were attributable?

A. Those figures came from the Houston general office, which originally contained some two hundred and fifty thousand dollars in legal fees, and those figures I have eliminated through the allocated portion. Now, I didn't make an examination of the Houston general office general expense accounts, because they were too voluminous for me to undertake in a work of this character.

Q. Did you go far enough to determine whether that covered legal expenses for operations in five States?

A. As I stated, I made no detailed examination whatever of the general office expense accounts, because the items contained therein were too voluminous for me to handle in any reasonable length of time.

Q. And did you determine the number of attorneys or the number of firms of attorneys in Texas or on the company's system who made those charges?

A. I stated, Mr. Coates, that I made no examination whatever of the items contained in the general office general expense accounts. I merely started with the total and the classification as shown on the books, because I did not have [fol. 1037] time to make a detailed examination of the entire general expenses of the United Gas Public Service Company.

Q. Why did you leave in this $225.95?

A. I don't know that I left that in. I have never been able to get the figures whereby I could reconcile the two exhibits.

Q. Did you ascertain that any of these fees were not paid?

A. No, sir.

Q. And I believe your answer is sufficient to indicate that you have not made any analysis of charges to determine what legal expense for 1933 was attributable to rate cases and which was attributable to other legal services?

A. I made no examination other than to determine that the legal expenses were greatly increased in 1933, and I know that during the year 1933 you had a considerable number of rate cases and also had the transmission line investigation, and you will observe by referring to Defendant's Exhibit 3 that the law expenses for the year ended July—ended December 31, 1933, are $4438.00——

Q. Yes.

A. —as compared to $1459.00 in the Defendant's Exhibit 2 for the year ended July 31, 1932, which is an increase of approximately three thousand dollars,

Q. So you just compromised by cutting practically all of it out, did you?

A. I stated that I eliminated all of the general office legal expense.

[fol. 1038] Q. Now, did you find any audit fees for the year 1933?

A. Yes, I found some audit fees.

Q. Did you find that those were increased over the year ended July, 1932?

A. I don't believe I have that. There was a small increase.

Q. What was it, stated as a percentage?

A. I will have to use the Defendant's Exhibit's figures, because I have not broken down my accounts to this subclassification. Referring to Defendant's Exhibit 2, for the year ended July 31, 1932, audit fees are shown as $373.66; for the year ended December 31, 1933, $571.06, or an increase of $197.00.

Q. Now, did you cut any part of those audit fees out?

A. No, I have not eliminated that.

Q. You left every dollar of those in, didn't you, Mr. Lewis?

A. Yes, sir. I might state that probably some of them should be eliminated, because there was considerable auditing done during that period attributable to bond issues, and the auditing expense was also increased because of the summary organization, and a part of that should be eliminated.

Q. What part of the auditing expense was attributable to bond issues, Mr. Lewis?

A. I stated that I made no detailed examination of these accounts, except in a general way.

Q. Well, do you state on your oath that a part of this item of audit fees for the year 1933 was attributable to bond issues?

[fol. 1039] A. No, I could not absolutely say that it was, but I am of the opinion that part of it was.

Q. Well, what is that opinion based on?

A. It is based on general knowledge of the United Gas fees and the fact that the audits vary at times. More auditing was done than was usual or customary.

Q. Do you know how audits in connection with bond issues on the books of the United are charged?

A. No, sir.

Q. You don't?—You say you don't?

A. I don't know definitely. I have not, as I explained, made a detailed check on this general expense account, and I just know in a general way.

[fol. 1040] Q. Then if you don't know how audit fees on the books of the United are charged, which are attributable to bond issues and you have made no analysis of the audit fees to determine what charges were made for bond issues and whether any of them were included in this item for this operating statement, how can you state that part of that is attributable to bond issues?

A. I was not sure enough of it to eliminate any part of the audit fees.

Q. That was not my question. You made the statement here that part of that, in your judgment, was attributable to bond issues and I want to know whether it is just a guess or if you have facts to base it on.

A. I stated that in only a general way, and stated that I was not sure enough of it to eliminate it, and so it is all left in there.

Q. And you can not point to any accounting record or any investigation you have made to support your opinion, can you?

A. No, I made no detailed investigation of the general office general expense account.

Q. Now, you have likewise eliminated all items of donations, have you not?

A. Yes, I have—or I say I have eliminated all items of donations; there may be some in the district general expense I did not eliminate.

Q. How much did you leave in for donations?

A. I stated there may be some left in the general office [fol. 1041] expense but I am not sure whether or not there is. I will have to refer to my papers in order to determine that.

Q. Do you know whether donations—I believe the amount you have eliminated here is $36.00 and $102.00 or $138.00 for the year; do you know whether subscriptions to the Chamber of Commerce are classified as donations?

A. I just accepted the company's classification of donations as being donations, and made no detailed check of any of the general office general expense accounts.

Q. In other words, you do not know what is in that item of donations?

A. No, all I know is that the general office books indicate that this amount has been paid for the account classification, donations.

Q. Well, under the account classification described by the National Association, do you know whether donations—that is, whether subscriptions to charitable organizations, Chambers of Commerce, churches and what not, are carried in the account classifiation, donations?

A. I am not sure under that particular classification, but in general practice you find donations some times sepa-

rated and sometimes in the same account with your subscriptions.

Q. But you do not know what would be the proper classification under the classification prescribed by the National Association of Railway and Public Utility Commissioners?

A. In this instance there is no account classification for [fol. 1042] subscriptions, due and donations. It is just the title, donations, and I assume the subscriptions have been charged to the donations account, although I do not know what has been charged in there, because I have made no detailed check.

Q. Well, in your experience in auditing the books, records and accounts of businesses, have you found that donations of that character are practically an inevitable cost of doing business, Mr. Lewis?

A. Well, I wouldn't say an inevitable cost. Some concerns are rather generous in their subscriptions and donations, and others pay nothing.

Q. Well, does this item of $138.00 indicate any prodigal generosity or throwing around of money?

A. No, I wouldn't think so.

Q. And not referring now to the amount, but referring to donations as an item of operating expense, have you generally and normally found that it is impossible to do business in a community without having some expense classified as donations?

A. I would not say that it is impossible.

Q. I am asking you, as a practical proposition.

A. Well, as a practical proposition, I would say it is not impossible to do business without donations.

The Court: Isn't that about enough along that line?

Mr. Coates: I have just one or two more questions, if I may, and then I will get away from this.

The Court: All right; lawyers sometimes forget them- [fol. 1043] selves and kill too much time in one little spot.

Q. Now, in all reports to the federal government for the purpose of showing net income, donations are deducted, are they not?

Mr. Bobbitt: I don't think, if the Court please, we should go into what the federal government will allow in an income tax return.

The Court: I will sustain the question as asked.

Q. But does your elimination of donations, both for this period and marking the item questionable for all other periods, indicate your accounting judgment that donations in any amount are not a proper cost of doing business?

A. In connection with investigations of this character, there is considerable question as to whether it is a necessary cost or not.

Q. I am asking for your accounting judgment about it.

A. Naturally my accounting judgment in general practice would not in all cases coincide with my accounting judgment in a proceeding of this kind.

Q. What is your accounting judgment in your general practice.

A. What was the original question—read it please.

(Whereupon the following question was read to the witness; "But does your elimination of donations, both for this period, and marking the item questionable for all other periods, indicate your accounting judgment that donations in any amount are not a proper cost of doing business?")

A. I think business can be transacted without the payment of donations.

[fol. 1044] Q. How long have you been in business for yourself, Mr. Lewis?

A. Not very long.

Q. All right. Now, Mr. Lewis, turning to Plaintiff's Exhibit 4, how much did you deduct from reserve accruals to represent amounts accrued for the Jennings-Roma line?

A. At the time the properties were transferred to the United Gas Public Service Corporation on October 21, 1932, I had for depreciation allocated to the Jennings-Roma line, $56,590.74.

Q. Now, you show that the net additions to property, by which I take it you mean additions less retirements, at the time the properties of the Border Gas Company were transferred to South Texas Gas Company, of $1,006,512.13, that date being April 10, 1928?

A. That is correct.

Q. And that as of the time these properties, eliminating the Jennings-Roma line were transferred to United Gas Public Service Company, the historical cost of the property, being net additions, was $1,049,735.38?

A. That is correct.

Q. And that is gross additions less retirements?

A. Yes. In connection with the foot note—during the year ended July 31, 1932, there had been two substantial retirements which were credited out of fixed capital and the replacement was not charged into fixed capital until some time after the transfer of the properties to the United Gas Public Service Company.

[fol. 1045] Q. Well, have you picked up that replacement in your figures?

A. Yes, at a later date.

Q. And is that replacement picked up in the figure showing the net historical cost of $1,153,232.98 as of December 31, 1932?

A. That is correct.

Q. And is likewise carried into the figure showing historical cost of properties as of December 31, 1933, of $1,151,993.65?

A. That is correct.

Q. And all of these eliminate from consideration the Jennings-Roma line?

A. That is correct.

Q. And likewise any amount in the opening entry to this account, except the $166,000.00 figure which was testified to by Mr. Kinney?

A. That is correct.

Q. Did you go over these books for any period prior to April 10, 1928?

A. No, sir, I did not.

Q. Well, during the period covered by you, has any amount been included in here for materials and supplies?

A. Yes.

Q. What amount?

A. Well, to give you a detail of the amounts charged in here——

Q. I am talking about what the materials and supplies were carried on hand by an operating company.

A. You mean the inventory of that?

[fol. 1046] Q. Yes.

A. No, there is nothing in here for that.

Q. Is there any amount included here for cash working capital?

A. No, sir.

Q. And did you have any thing to do—or did you work on that opening entry?

A. You mean on the $550,000 entry?

Q. Yes.

A. No, sir, I did not.

Q. Mr. Lewis, at the time these properties were transferred from the Border Gas Company to South Texas Gas Company and the Texas Border Gas Company, namely as of April 10, 1928, was any of the surplus or reserves of Border Gas Company taken over by either of the two transferee companies?

A. There were no reserves set up on the South Texas Gas Company books; the assets were transferred at the depreciated value, or rather, at the appraised value——

Q. At an appraised value?

A. Yes, and there was no reserve for depreciation set up on the South Texas Gas Company books or the Texas Border Gas Company books.

Q. How about surplus account—was it transferred?

A. The surplus account would not be transferred, no.

Q. Then, as I understand it, when the transfer of these properties occurred, neither the surplus nor the reserve account went with the physical property?

[fol. 1047] A. No, there was no reserve account transferred and naturally the surplus of a concern transferring its properties, in the ordinary sense, would not be transferred.

Q. And do you mean to indicate that the charges to the reserve as of any period here, or rather the reserve accruals accumulated were carried and kept on hand in cash by Border Gas Company, so that they could be transferred?

A. No, the term depreciation reserve does not mean that actual cash is set aside. It is simply a portion of the profits which are reserved for that purpose, and it does not necessarily mean any amount of money was set aside.

Q. You simply take your gross revenues and deduct your operating expenses, and then any amount that you have left, part of that is available for either putting in surplus or the declaration of dividends, is it not?

A. Indirectly that is the end that is achieved.

Q. And the reserve accruals are book entries in the sense that that amount of money is not set aside in the normal practice and retained in a reserve account?

A. They are book entries, and the depreciation reserve is what is known as a valuation reserve. The company setting up the reserves does not wish to credit those pro-

visions direct against the fixed assets accounts, for the reason that they might lose sight of the original cost, and so they open a new account, termed the depreciation reserve account, and make the credits to that account.

[fol. 1048] Q. Have you given a study to the principles of reserve accounting, Mr. Lewis?

A. I have studied it, but you can study it a good deal longer than I have, and still be somewhat at sea on it.

Q. Isn't the purpose of a reserve to provide, out of operations for each year, a sufficient amount to take care of retirements and replacements of the property as they occur?

A. Yes, the object is to make an annual provision to take care of the retirements of property so that when the properties are retired, the entire cost will not have to be charged against one year's operations, the object being to even out those charges as the properties are used, and to write their value off over their useful life.

Q. In other words, so that by relatively even charges to the reserve over the period of the useful life of the property you may have, at the time any particular unit or group of property is retired, a sufficient amount to cover the cost of that particular unit or group of property?

A. By those comparatively even charges to operating account and not to the reserve account. The reserve account is charged with the actual retirements.

Q. Now, are you the author of the two columns headed Adjusted Depreciation, shown on page 2 of Plaintiff's Exhibit 4?

A. Yes, I am the author.

Q. And are those computations based on your knowledge of reserve accounting principles?

[fol. 1049] A. No. The reason the three per cent was used, was because that is the rate designated by the Commission's order.

Q. All right. Now, refer here, Mr. Lewis, to the fourth column on page 2 of Plaintiff's Exhibit 4, headed Accumulated Additions, and will you please state the amount of accumulated additions on hand at the end of June 30, 1915?

A. $234,311.33.

Q. And the total amount of additions, not making deductions for retirements, is approximately $2,000 in excess of that amount, isn't it?

A. I didn't understand the question.

Q. I say the total amount of additions, without deducting retirements occurring within that period, is approximately $3,000, it is, in excess of that amount, isn't it?

A. $3,000 in excess of the $234,000?

Q. Yes.

A. I don't quite understand that.

Q. Well, the figure you have read is the accumulated additions; that is, the gross additions, after retirements, is it not?

A. Yes, that is the accumulated additions at the end of the year.

Q. Now, the total physical property added during that period of some five and a half years, without retirements, would be the sum of $234,311.33, plus the figures shown in the retirements column for that same period, would they not?

A. Yes.

Q. And that is approximately $3,000?

[fol. 1050] A. Yes, approximately $3,000.

Q. Now, that property, Mr. Lewis, or that investment, was made in property over a period averaging approximately 21 to 17 years prior to the date these properties were transferred to United Gas Public Service Company. That is, October 21, 1932?

A. Yes, approximately 17 years.

Q. That is, taking June 30, 1913, as the average date, you have between 18 and 19 years average spann of years there, have you not?

A. I don't quite understand what you mean, Mr. Coates.

Q. Well, in the period from the first day of 1911 to the 30th day of June, 1915, there were property additions gross in the sum of some $237,000?

A. Approximately, yes.

Q. Now, those additions were installed at an average date, say, of approximately 18 or 19 years prior to October 21, 1932?

A. You are assuming that the average date would be June 30, 1913?

Q. Yes.

A. So that would make the average life approximately 19 years.

Q. Yes; now——

The Court: Gentlemen, let's take ten minutes recess.

Whereupon, at 3:30 P. M. a recess was had until 4:00 P. M.

[fol. 1051] By Mr. Coates:

Q. Now, Mr. Lewis, referring back to Legal Expenses, it was your intention to eliminate all legal expenses from these operating statements?

A. It was my intention to eliminate all legal expenses allocated from the general office.

Q. Do you know whether the amounts paid, both retainers and fees of local attorneys in Laredo, are carried on the General Office accounts?

A. I can't say at this time. As I stated I will look into my detail work papers of district expenses tonight and see if I have included there any legal expenses. I am not sure at this time.

Q. In order to enable you to find the items, look up the fees paid Mann, Neel & Mann; and in order for you to identify one of the items of expense, look for the charge in the case of Wolf and Reuthinger vs. United Gas Public Service Company in 1933; and likewise, for charges for examination of papers, drawing contracts, and things of that kind.

A. I will not have the details of the General Office Legal Expenses paid. Included in that total I will not have any detail on them.

Q. Referring now to page 2 of Plaintiff's Exhibit No. 4, as at October 21, 1932, what were the total retirements of property, Mr. Lewis?

A. $261,043.77.

Q. What were your total charges to Reserve including [fol. 1052] Retirement Expenses charged to Operation?

A. $206,496.46.

Q. Including Retirement Expense charges to Operations, Mr. Lewis?

A. It would be $258,354.17.

Q. Now, at what annual rate of reserve accrual would it have been necessary to accrue reserves on property installed by June 30, 1915 in order to equal the amount of retirements or charges to the reserve by October 21, 1932, approximately?

A. I would have to make that computation; I don't know.

Q. It would be in the neighborhood of six per cent, would it not?

A. I don't know. I would have to compute it. Do you want to know what rate prior to June 30, 1915 would have been necessary to provide a reserve sufficient to take care of the retirements down to October 21, 1932.

Q. Exactly; and at the end of a period of less than twenty years from the date we fixed as the average date there, that is June 30, 1913, more property was retired, was it not, than had been installed down to June 30, 1915?

A. I don't quite understand the—the total amount of additions at June 30, 1915 would, approximately, be $237,000.00.

Q. Yes.

A. And the total amount of retirements through October 21, 1932 is $261,000.00, which is obviously greater than $237,000.00.

[fol. 1053] Q. Well, if you had accrued reserves at the rate of five per cent per annum on the property installed prior to June 15, 1915, would you have had a sufficient amount to equal retirements of property by the end of 1932?

A. I don't know whether you would or not.

Q. Is it not a very simple calculation, Mr. Lewis?

A. Well, it might——

Mr. Bobbitt: Do you want him to calculate it?

Q. Yes. If you accrued reserves at the rate of five per cent per annum for twenty years on $237,000.00, at the end of that twenty-year period you would have $237,000.00, would you not?

A. If there were no additions or retirements?

Q. Yes.

A. It would provide a reserve of 100 per cent at the end of twenty years at the rate of five per cent.

Q. What amount of property was added from the period from June 30, 1915 to the end of 1920? I have down here $147,778, omitting cents; see if that is correct.

A. The total additions from June 30, 1915 to December 31, 1920?

Q. The next five-year period—approximately five and a half year period?

A. It looks like it would be approximately $185,000.

Q. Now, take Total Property Additions installed in the five-year period from January 1, 1921 to December 31, 1925; what were those additions?

[fol. 1054] A. Approximately $537,000. I am not figuring the exact amount.

Q. You are familiar with the simple turn-over method of computing the adequacy of annual reserve accruals, are you not?

A. I don't know that I am.

Q. To refresh your memory, doesn't the turn-over principle rest upon this proposition; that the property remaining in service is assumed to be the property last installed?

A. Under that theory any retirements—of course, if possible, the retirements should be cut out of the year's acquisitions in which it was installed; but in the absence of that definite knowledge, it is generally assumed that a retirement is made from the first acquired properties.

Q. That is right; and that the property remaining — service and which has not been retired, is the property which is most recently installed, and the property which is retired is the property first installed?

A. That would be the general assumption; but in all cases where possible you should determine the actual acquisition date of any property that is retired.

Q. That is right. Doesn't the fact that at the end of seventeen to twenty-one years after $237,000 of property were installed that the retirements were between two hundred fifty and two hundred sixty thousand dollars indicate to you that by the application of the turn-over method of figuring the adequacy of reserve accruals, the reserve accruals should be somewhere between five and six per cent?

[fol. 1055] Mr Fitzhugh: We object to that question because there is no proof at all that that is the system used by the Company.

The Court: Mr. Reporter, will you read the question, please?

(Thereupon the Reporter read the following question: "Q. That is right. Doesn't the fact that at the end of seventeen to twenty-one years after $237,000 of property were installed that the retirements were between two hundred fifty and two hundred sixty thousand dollars indicate to you that by the application of the turn-over method of

figuring the adequacy of reserve accruals, the reserve accruals should be somewhere between five and six per cent?)

The Court: I will sustain the objection. You can have your full bill, Mr. Coates.

Mr. Coates: We wish our exception noted, and the statement of the Court that we may have a full bill of exceptions, and that each and all of the grounds of the exception may be put in the full bill.

Q. On the property which was installed between 1916 and 1920, which is at an average age of twelve to seventeen years prior to October 21, 1932, what amount, in your opinion, should be on hand in the reserve to take care of reserve accruals—to take care of the retirement of that property?

A. I can't say as to that, Mr. Coates, because I can't determine from which of these years acquisitions and retirements have been made. It may be that some of those ad- [fol. 1056] ditions have been replaced in the last year or two and all charged out.

Q. Wouldn't that indicate even a shorter period for accruing reserves than what I am inquiring about, which is to take the earliest property and assume that the first property installed is that retired?

A. Well, there might be reasons for retirements other than actual wearing out of the property. I couldn't say whether a reserve is adequate or inadequate without knowing the condition of the property, and the number of replacements that have been made, and the repairs made and charged to operations, and any number of things that I would have to consider; and I don't feel qualified to say whether a reserve is adequate or inadequate.

Q. From the facts you have set forth on page 2 of Plaintiff's Exhibit 4, do you feel that facts are set forth there which would enable one who has studied the principles of reserve accounting to compute the adequacy of a reserve accrual for this property?

A. I don't believe there are enough facts on this Exhibit alone to enable you to determine that. You would have to take into consideration a number of factors.

Q. What factors not reflected on page 2 of Plaintiff's Exhibit No. 4?

A. The repairs to the lines, in keeping them in good condition, that might have been made and charged to Opera-
[fol. 1057] tions during the periods; or the retirements that might have been made and charged to Operating accounts other than the ones shown here; the general condition of the properties at this time, and any number of factors would influence one's decision as to whether a reserve is adequate or not.

Q. Well, in the case of this reconditioning of the Jennings-Pescadito line, you eliminated that from Operating Expenses, did you not?

A. Yes; I did.

Q. And did you make that amount eliminated a charge against the reserve accruals which you have set up in Plaintiff's Exhibit Number 4?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Where does it appear?

A. It appears on Page 1 of the Exhibit.

Q. And what figure is it?

A. $31,143.60.

Q. And the amount you eliminated was thirty-three thousand some odd dollars. How did you compute the charge to the reserve?

A. The item I eliminated contained eliminations for properties other than the properties shown on this Exhibit. You see I started with the Maintenance Expense account of the San Antonio District, and made my elimina-
[fols. 1058-1063] tions from that district as a total before I started allocations. Included in my thirty-three thousand dollars elimination is an item for retiring some pipe close to San Marcos and repairing the pipe line immediately south of San Antonio, and other items that would not be reflected in this exhibit.

Q. Now, you audited these books back as far as April 10, 1928; did you eliminate from Operating Expenses all maintenance items that you felt should be charged to Reserve?

A. I did not make an audit for the period from April 10, 1928 to February 28, 1930. It was more of a summary analysis. From that time on I have made a rather comprehensive check of the items.

Q. And have been careful to eliminate any charges from annual Operating Expenses that you thought were extraordinary or non-recurrent?

A. No, I haven't; some of the items I could not definitely determine should be charged to reserve I have left in there, particularly in respect to the Laredo Distribution District for the year ending July 31, 1932. The Maintenance of Distribution System for that period was considerably more than it was in any other period due to the fact there was more repairing done and more expenditures for replacing small items; but they were all small items, and it would have taken too much time to pick them out.

. . . . . .

[fol. 1064] Redirect examination.

Questions by Mr. Bobbitt:

Q. Mr. Lewis, you were interrogated this morning, I believe it was, about this gathering charge of six cents, and you made some explanation as to why you made such eliminations.

Mr. Coates: We object to the question, because there is no testimony in the record about a gathering charge of six cents.

Mr. Bobbitt: Well, a charge for gas.

The Court: Well, he wasn't asking a question. I believe he was just making a preliminary statement.

Mr. Bobbitt: Yes, sir.

Q. And you gave some explanations of why you made certain eliminations about that six cent price in the Carolina-Tex field for gas acquired from the subsidiary, the Southern Gas Company?

Mr. Coates: We object to the statement of the attorney in the presence of the jury, to the effect that there is a six cent price for gas in the Carolina-Tex field shown in any of these operating statements, because it is not supported by the record, and is prejudicial.

The Court: Yes, I will sustain the objection; and, gentlemen, you will not pay any attention to six cent gas. If they want to explain to you what it is, all right; or make the statement fuller.

[fol. 1065] Q. What reference did you make this morning to the six cent charge in the Carolina-Tex field for gathering?

Mr. Coates: The same objection.

The Court: No, I think there was a six cent charge referred to.

Mr. Coates: Note our exception.

Q. Do you recall, Mr. Lewis?

A. You refer to the gathering charge of one cent per thousand cubic feet?

Q. Yes, sir.

A. Which is paid in addition to the cost of the gas?

Q. That is correct, isn't it?

A. Yes, sir.

Q. All right. That is in the Carolina-Tex field, isn't it?

A. Yes, sir.

Q. Now, do you know what the same company charges for gas from the Bruni or Carolina-Tex area, delivered at the Jim Hogg Junction?

Mr. Coates: Our same objection to that, because no proper predicate has been laid here, showing the conditions are like and comparable.

Mr. Bobbitt: Well, we can't ask it all at one time.

The Court: I will sustain the objection.

Q. Do you know the price of gas that is charged by the Company for delivery at Jim Hogg Junction?

Mr. Coates: The same objection.

[fol. 1066] The Court: Yes, it is objectionable, Mr. Bobbitt, the way you have asked it.

Q. Explain, Mr. Lewis, why you made the elimination you testified about in respect to that one cent gathering charge from the Carolina-Tex field, in addition to the purchase price of the gas.

Mr. Coates: That is objected to as repetition. I think he has fully explained that.

Mr. Bobbitt: No, sir, he hasn't fully explained it.

The Court: I will overrule the objection to that. I don't remember clearly in my own mind whether he has answered that question; it seems that he has, but I am not sure about it.

Mr. Coates: Note our exception.

A. That charge has been eliminated for a number of reasons:

Q. State them, please.

A. The first reason that I had in making that elimination was that the contract providing for the one cent gathering charge was not made until the Roma line was built. Prior to that time the South Texas Gas Company had been purchasing gas without that added one cent gathering charge, and it was my reaction that if it were necessary to pay the one cent gathering charge at that time it was due to the addition of a new demand for gas which diverted the gas that had formerly been going to Laredo, so that there was an in-
[fol. 1067] creased cost to the Laredo lines occasioned by the addition of the Monterrey line. Another reason that I have eliminated this charge is because the Southern Gas Company at the same time it was billing gas to the South Texas Gas Company at five cents plus a one cent gathering charge in the Carolina-Tex field was also making deliveries at Jim Hogg Junction to the South Texas Gas Company at a price of five cents per thousand cubic feet, without the added gathering charge. And another reason that I have eliminated the item is because after the contract was made with the Southern Gas Company in 1929, gas was billed direct from the Southern Gas Company to the South Texas Gas Company, part of it at five cents per thousand cubic feet and part of it at six cents per thousand cubic feet; and at the same time there was a contract between the South Texas Production Company and the South Texas Gas Company providing that the South Texas Gas Company would deliver to the—the South Texas Production Company would deliver to the South Teaxs Gas Company all the gas that they needed at eight cents per thousand cubic feet for industrial gas and thirteen cents per thousand cubic feet for domestic gas. That contract was amended in 1929, specifying that all gas delivered under that contract would be billed at five cents per thousand cubic feet. So that from the period the contract between the Southern Gas Company and the South Texas
[fol. 1068] Gas Company went into effect and February 1, 1931, South Texas Gas Company was paying the Southern Company five and six cents per thousand cubic feet on gas billed direct to them, and they were paying the South Texas Production Company at the rates of eight and thirteen cents per thousand cubic feet. Beginning on February 1st, 1931,

the gas that had formerly been billed direct from the Southern Gas Company at five and six cents was billed through the South Texas Production Company at eight cents, and in addition to that South Texas Gas Company was billed one cent per thousand cubic feet additional for the gas gathered under the contract. I might——

Q. When was this—Go ahead.

A. I might have mentioned some other reasons before, that I do not recall right now.

Q. This contract related to——

Mr. Coates: We renew our objection and move to strike the testimony, because it is repetition.

The Court: I will overrule it because I do not recall whether it is repetition or not. I do recall his re-statement of one reason, but the other I don't. I will overrule it.

Mr. Coates: Note our exception.

Q. This contract you refer to of the eight cent gas and the thirteen cent gas is the contract that we asked Mr. Stein to furnish us, and which you heard his testimony the other day, in which he stated he would furnish it to us here?

[fol. 1069] A. I didn't hear all of Mr. Stein's testimony. I don't recall whether he did or not.

Q. Mr. Lewis, when was the item pipe line rental first set up on the operating statement by the Company, if you know?

A. It was about the first of January, 1930. It may have been December '29.

Q. Is it being set up any differently, or was it set up any differently this last year—this past year than it was prior to that time?

A. No, I think it has been set up consistently in the same manner, as a monthly charge of $1150.00 a month.

Q. That refers to the pipe line in the East Jennings field, doesn't it?

A. That pipe line rental is paid to the Southern Gas Company for the use of the line from Jennings Junction to Jim Hogg Junction.

Q. All of these companies—the South Texas Production Company and the South Texas Gas Company, and any others you mentioned, they are all subsidiaries of the United Gas Public Service Company, or were?

A. The South Texas Production Company was owned by the South Texas Gas Company, and the South Texas Gas Company was, in turn, controlled by the United System, or

whatever the operating—the United Gas Company, I believe.

Q. Yes. Taking these in inverse order and going back up [fol. 1070] the line here, Mr. Lewis, just for a few questions,—on this elimination of this item of donations you testified about a moment ago, you were asked whether or not from your accounting experience and practice, if that was a proper item to allow or to be charged and paid as an operating expense. As a matter of fact that can be allowed or is allowed sometimes as an operating expense and sometimes is paid by the stockholders of the company, isn't it?

A. Will you repeat the question?

Q. Well, just strike that question. I will ask you this question, Mr. Lewis, if the item of donations, such as you were asked about, if paid by the company and charged as an operating expense, it is in fact paid by the ratepayers, isn't it, and not by the company?

Mr. Coates: Just a moment. We object to that.

The Court: I will sustain the objection.

Q. Well, from your experience, Mr. Lewis, as an accountant, along the lines you were asked about, it is not always allowed—this item of donations is not always allowed as an operating expense, is it?

Mr. Coates: Now, just a moment. We object to that question. I don't know what he means by "allowed". But if he means allowed by a regulatory commission or a court in a [fol. 1071] case of this sort, it obviously calls for his legal conclusion, and goes to one of the ultimate issues to be determined either by the Court or the jury in this case.

The Court: Yes, I——

Mr. Coates: We object to it for both of those reasons.

The Court: You made inquiry a good deal about donations this morning, and on their objection, if they had objected, I would have sustained it. Now, you are objecting and I am going to sustain it, because whether donations have been allowed or are allowed is not a question this court should allow before this jury.

[fol. 1072] Mr. Coates: Well, I sought to project all my questions along the line of his accounting judgment.

The Court: Well, it's settled; I have sustained you now and I would have sustained them had they objected.

Mr. Bobbitt: Well, we didn't object, and as stated in the beginning, if the court please, on these accounting——

The Court: But that doesn't make it admissible.

Mr. Bobbitt: Very well, if we have waived our rights, we have waived them, if the court please, but as stated in the beginning of the trial of this case, we desired not to be making objections and that he could ask leading questions as he has, but if he wants to object, that's all right.

The Court: I never saw more agreeable lawyers in my life, and I am very happy about it.

Mr. Coates: I don't want to be placed in the wrong attitude here, if the Court——

The Court: That's all right; he smiled at the Court when he said that.

Mr. Coates: He said that in the beginning we would not make any formal objections; that is, not object to leading questions or anything of that sort but would let them go by, but would make objections as to the legal admissibility as to the substance of any testimony sought to be elicited where we thought it would be inadmissible legally, and we have sought consistently to follow that out.

The Court: Well, I have sustained your objection; go right ahead with your questioning, gentlemen.

[fol. 1073] Q. Mr. Lewis, in your answer to the question while ago, as to your elimination of these donations as an operating expense, did you mean to testify that they were not properly allowable, that is, donations to charitable institutions or Chambers of Commerce and so forth, that you were asked about?

A. I don't quite understand what you mean by allowable. Do you mean is it usually considered an ordinary operating expense?

Q. Yes; why did you eliminate those items?

A. I eliminated them because——

Mr. Coates: We object because it is repetition.

The Court: Gentlemen, if this man didn't answer that question as emphatically and positively as he could, I don't know it—he stated over and over again in this record as to why he eliminated them.

Q. As a matter of fact, I don't think some of these questions are very clear; they were asked by the attorney for the utility——

The Court: All right; go ahead—we will lose as much time arguing about it as it would take to ask and answer the question, so go ahead.

Q. Did you tell us why you eliminated those items?

The Court: I sustained an objection to that question on the ground that it was repetition.

A. As to whether they are eliminated, Mr. Lewis, doesn't it depend, in your judgment, on who pays them—who actually pays them, these donations?

A. Well, if the corporation had not paid the donations, [fol. 1074] they would not be in the corporate expense accounts. There is some confusion as to whether a donation is a proper operating cost or a distribution of profit or an amount paid for stockholders.

Q. The confusion, as I understand it, is as to who actually has to pay the money; isn't that it?

Mr. Coates: We object to the question, because it is not confined to his accounting judgment.

The Court: Sustain the objection.

Q. All right; you were asked at great length here, Mr. Lewis, by Mr. Coates, about the detail of this general office general expense. I believe you testified you made no detailed audit of the general office general expense?

A. No, I made no detailed audit of the items charged to the general expense accounts on the general office books.

Q. How long wou-d it take you, if you know, approximately, to make a detailed audit of that item on the company books?

A. It would take more time to make a detailed check of the items charged to that account than to do all the rest of the work.

Q. It would take three to six months, wouldn't it?

A. It would take a good long while; possibly six months, for one man.

Q. Now Mr. Lewis, on this question as to new business expense, you testified you made certain eliminations in that item. Were you here the other day when Mr. Stein, the district manager of the company, testified that they had reached the point of saturation for customers and volume of gas at Laredo?

[fol. 1075] A. Yes, I believe I was here at that time.

Q. Well, from your accounting practice and in your judgment, if the utility has reached the point of saturation, do you think $6,000 ought to be allowed for new business expense for the year 1933?

Mr. Coates: We object to that because it is not confined to his accounting judgment, and is an attempt on the part of this accountant to substitute his judgment for the judgment of the business officials of the company.

The Court: Yes, he based it on his accounting judgment; that is in the question.

Mr. Coates: And no proper predicate is made showing the legal admissiblity of the accounting judgment of the witness in this regard with respect to the judgment of the managing officials of the company.

The Court: He has asked the question of this man as an expert witness, and the objection is overruled.

Mr. Coates: Note our exception.

A. I have included in Exhibit 8 a proportionate part of the new business expense incurred in the Laredo district, and charged to new business expense in that district. I have not allocated to Laredo any part of the general office new business expense for the reason that I consider that general office new business expense more applicable to the new distribution systems. There is still another reason: in the general office new business expense, the total amount [fol. 1076] of the general office new business expense for the year was $47,654.87. Of that amount $21,274.07 is for industrial engineering, or the adding of new industrial customers. Under the company's system of allocation, that item is all designated as transmission system general new business expense. In as much as the transmission system could not and does not add new customers in the city limits of Laredo, no part of that item would be applicable to the city of Laredo, anyway.

Q. And you have eliminated that?

A. I eliminated that, and that is about half of that general office new business expense account, and for the other reasons that I have already stated, I have eliminated the balance of that account.

Mr. Coates: Now we at this time move to strike out this testimony for the same reasons stated in our objection.

The Court: Overruled.

Mr. Coates: Note our exception.

Q. You were also interrogated about the question of why you made that elimination of new business expense, as to whether or not that was necessary to hold old customers as well as an effort to secure new ones, and I believe you testified that in the transmission new business expense item there, they only had one or two customers; is that correct.

The Court: Read that question again (Question read)

Mr. Coates: It is understood our objection goes to all this line of testimony.

[fol. 1077] The Court: Did you ask any such question as that this morning?

Mr. Coates: I don't recall it; I hestitate to say as to that, whether I did or not.

(Off the record discussion between Court and Counsel.)

Q. In connection with that item of advertising expense you were interrogated about, and you made that elimination—as I understand you were asked the question whether or not that should not be allowed in there, because it was an effort to hold old customers as well as to try to secure new ones, and you testified you made certain eliminations of that item.

A. I testified that in my opinion, the new business expense was primarily——

Mr. Coates: Has a question been asked?

The Court: No.

Mr. Coates: Then we move to strike out the statement of counsel.

The Court: There was no question involved in what you said, Mr. Bobbitt, if I understood you.

Q. Why did you make that elimination?

Mr. Coates: Our same objection, to all this line of testimony.

The Court: Now, what was the objection?

Mr. Coates: The objection is that no proper predicate is laid for this line of questioning, which has the witness substitute his judgment for the judgment and discretion of the managing officials of the company.

[fol. 1078] The Court: I overruled it, and hold it proper cross examination.

Mr. Coates: Note our exception—This is their witness.

The Court: All right; it is their witness all right, but it is examining about what you did, instead of cross examination; I used that term inadvertently.

A. What was the question?

(Last question above read to witness.)

Mr. Coates: The same objection.

The Court: Overruled.

Mr. Coates: Note our exception.

A. I eliminated the general office new business expense applicable to the transmission system——

The Court: He is talking about the advertising.

A. The item of advertising is included in the new business expense, so that anything I say about new business expense includes advertising. Now, I eliminated the general office new business expense applicable to the transmission system for the reason that the transmission system does not have any industrial customers within the city limits of Laredo, and have eliminated the new business expense applicable to the distribution system, for the reason that I feel the general office new business expense should be applied to the new distribution systems rather than to the old systems, like Laredo.

Mr. Coates: It is understood our objection goes to all [fol. 1079] this line of testimony?

The Court: Yes.

Q. You were interrogated, Mr. Lewis, about this $33,000.00 repair or reconditioning item of the Jennings-Pescadito line, and you were asked if it wasn't true that both you, as auditor for the city, and Mr. Womack, as auditor for the company, had each eliminated that item. I will ask you whether or not that elimination was made by the auditor for the utility until you had called it to his attention in connection with your elimination?

Mr. Coates: Well now, of course, if he knows that of his own knowledge, as to when Mr. Womack——

The Court: I will sustain that objection, as to when they did it.

Mr. Bobbitt: I want to bring out, if the Court please, why it was done.

The Court: Why who did it? Why he did it, or the other fellow?

Mr. Bobbitt: I want to show why he eliminated it.

The Court: It doesn't make any difference which one called it to the attention of the other, or which did it first, but he testified that both of them had eliminated it.

Q. When did you make that elimination, Mr. Lewis, if you know?

A. I do not know exactly when I made the elimination. It was during the preparation of the exhibits.

Q. Had it been eliminated by the auditor for the utility at [fol. 1080] the time you made your elimination, if you know?

Mr. Coates: The same objection.

The Court: If he knows, I will let him answer that.

A. The item eliminated, of course was not set out on the company books. It is all charged into the maintenance expense, and any elimination that is made is necessarily made on the working papers of the one preparing statements from the books, and as to when the elimination was made in the preparation of the company's exhibits, I don't know.

The Court: It's five o'clock. We can quit now if you want to, or if you want to stay and ask a few more questions——

Mr. Bobbitt: I'm ready to quit for a while.

The Court: We will recess until nine o'clock in the morning.

Whereupon, at five o'clock P. M. March 22, 1934, said cause was recessed until nine o'clock A. M. March 23, 1934, 53rd District Court of Travis County.

[fol. 1081] Friday, March 23, 1934

Morning Session: 9:00 A. M.

Leon O. Lewis, a witness for plaintiff, resumed his testimony and testified as follows:

Redirect examination resumed.

Questions by Mr. Lange:

Q. Mr. Lewis, referring to Defendant's Exhibit 5, and particularly to Graph No. 3, we inquired of Mr. Womack to

supply the volume of gas covering the four periods of June 30, 1929, June 30, 1930, June 30, 1931, and July 31, 1932. Has Mr. Womack supplied those figures?

A. Yes, sir.

Q. Do you have them there?

A. You refer to the volume?

Q. Yes, of the non-recurring revenues.

A. Yes, I have those.

Q. Will you please give them to the stenographer?

A. The volumes of gas included in Defendant's Exhibit 5 applicable to the non-recurring revenues as given us by Mr. Womack: for the year ended June 30, 1929, 356,623 M. C. F.; for the year ended June 30, 1930, 485,359 M. C. F.; for the year ended June 30, 1931, 295,139 M. C. F.; for the year ended July 31, 1932, 76,962 M. C. F.

Q. Those figures represent the volume of gas as indicated [fol. 1082] in Defendant's Exhibit 5, Graph 3, the stacks beginning at the left, the top of the stacks in white, do they not?

A. The white portions of the stacks in Graph No. 3 represent non-recurring revenues. The figures I have just given represent the volumes of gas sold, which reflect the revenue shown in the white portion of the stacks in Graph No. 3.

Q. Now, referring to Plaintiffs' Exhibit 8, page 1, have you with the use of those figures furnished you by Mr. Womack adjusted first the gas sales appearing under Operating Revenues on your exhibit on page 1—Exhibit 8, page 1—gas sales?

A. I have computed what the total operating revenues would be after elimination of the non-recurring revenues, or the revenues designated by defendant's exhibit as non-recurring revenues.

Q. Have you that by years for the periods reflected in Exhibit 8?

A. Yes.

Q. Can you give us that for each year?

A. Yes.

Mr. Coates: We wish to make the same objection to testimony with respect to revenues and expenses for what we have denominated prior years—that is, 1929, 1930 and 1931—as having no bearing upon any issue in the case and relating to operating results under different operating and different economic conditions.

[fol. 1083] The Court: The objection is overruled.

Mr. Coates: Note the exception.

Mr. Lange: For the Court's information, this is their exhibit to which we were just referring.

The Court: All right.

Q. Will you give us those figures by years, Mr. Lewis?

A. The gross operating revenues as shown by Plaintiffs' Exhibit 8, after eliminating the items referred to in Defendant's Exhibit 5 denominated non-recurring revenues, would be as follows: For the year ended June 30, 1929, $222,516.93; for the year ended June 30, -30, $237,989.24; for the year ended June 30, 1931, $206,577.17; for the year ended July 31, 1932, $179,059.79; for the year ended December 31, 1933, $158,768.22.

Q. Now, will you give us the operating expenses, with the gas purchases eliminated, covering the alleged non-recurring revenues?

Mr. Coates: It is understood our objection goes to all this line of testimony?

The Court: Yes, sir.

A. If the gas purchases pertaining to the gas sold to non-recurring customers were eliminated from Plaintiffs' Exhibit 8, the operating expenses would be: For the year ended June 30, 1929, $118,368.34; for the year ended June 30, 1930, $137,731.40; for the year ended June 30, 1931, $112,370.46; for the year ended July 31, 1932, $109,973.16; for the year [fol. 1084] ended December 31, 1933, $93,298.46.

Q. Now the net return for each year before depreciation and income tax?

A. The net return before depreciation and income tax, after elimination of the non-recurring revenues, or the items designated by Defendant's Exhibit 5 as non-recurring revenues, and after elimination of the purchase price of the gas represented in those non-recurring revenues, would be: $104,148.59 for the year ended June 30, 1929; $100,257.84 for the year ended June 30, 1930; $94,206.71 for the year ended June 30, 1931; $69,086.63 for the year ended July 31, 1932; $65,469.76 for the year ended December 31, 1933.

Q. Now, Mr. Lewis, with reference to the rates of depreciation that the South Texas Gas Company and the Border Gas Company set up on its books from the time—from April, 1928—give us the rate of depreciation they set up in April,

1928, the annual rate of depreciation affecting these properties.

A. On the properties of the Texas Border Gas Company——

Q. That is the distributing company?

A. That is the distributing company—depreciation was set up at the rate of two per cent per annum until June, 1930. At that time there was a change in the method of computing retirement reserves, and from that date on there was no fixed percentage in computing retirement reserves; a reserve was set up in even amounts, which was a part of [fol. 1085] the total reserve set up for the entire United System.

Q. Then there was no direct rate of depreciation set up after that affecting any particular unit of their property?

A. No; the computations of the amounts needed for retirement for the United System were set up for the system as a whole and that amount was allocated to the various operating companies in the group, but there was no definite percentage in relation to the cost of the fixed properties. Now, the——

Q. Now, with reference to the—Proceed.

A. The transmission properties I have not given yet.

Q. Now, before we get off that two per cent rate that was set up, that was set up as affecting all the properties of the Texas Border or the South Texas Gas Company?

A. Just the Texas Border.

Q. Not any of their transmission or gathering properties?

A. The South Texas Gas Company—I don't seem to have the figures prior to 1930 in these papers; I can get it; I have it in some other papers. But 1930, the depreciation was set up on the South Texas Gas Company properties at a rate of three and three-fourths per cent per annum until——

Q. From what period and until what period?

A. The first figures I have in these particular papers are March, 1930. April 28, 1930. I will have to get the figures from another source.

Q. You have those among your work sheets?

[fol. 1086] A. Yes, sir; I have those among my papers. The rate of three and three-fourths per cent was used from March, 1930, to June. At that time the computation of retirement reserve was similar to that used in connection

with Texas Border Gas Company. A part of the United Gas retirement reserve was allocated to the South Texas Gas Company; it was not dependent on any rate as applied to the cost of the properties.

Q. Now, was there any separate rate of depreciation set up by them as affecting any gathering lines?

A. The rates I have given were applied to all of the depreciable properties. The gathering lines were computed at the same rate as the other properties.

Q. With reference to the period ended July 31, 1932,—the year ending July 31, 1932,—do you have figures reflecting the volume of gas per month that flowed through the Pescadito-Jennings line towards Laredo for that twelve-months period ending July 31, 1932?

A. I have a summary by months of the gas deliveries from the various wells delivering gas to the South Texas Gas Company transmission lines, taken from purchase invoices of the gas. Those invoices designate that the gas was delivered either to the Laredo line or the Monterrey line, so that I could tell by referring to those papers whether or not any gas in the Jennings area was billed to the Laredo line.

[fol. 1087] Q. Do you have those work-sheets?

A. The purchase invoices indicate that during the year ended July 31, 1932, there was only one month in which gas was delivered to the Laredo line from wells in the Jennings area.

Q. What month was that?

A. That was the month of August, 1932.

Q. Now, for the period—the year ended December 31, 1933. Oh, before we get to that, have you got the volume of that one delivery in M. C. F.?

A. The volume was 14,234 M. C. F., which was delivered from the Cuellar Brothers No. 1 Well. During the year ended December 31, 1933, there was delivered to the Laredo line at Pescadito Junction 27,431 M. C. F.

Q. Now, do you have the monthly deliveries for each—have you the deliveries for each month?

A. Yes, I think I have that. There was delivered at Pescadito Junction to the Laredo lines in May, 1933, 1,293, M. C. F.; in April, 1933, 1,694 M. C. F., in March '33, 1,347 M. C. F., in February, 1933, 1,472 M. C. F., January, 1933, 1,638 M. C. F.

Q. Those were the total deliveries——

A. Just a moment.

Q. All right.

A. In November, 1933, 8,176 M. C. F., and in December, [fol. 1088] 1933, 11,811 M. C. F. That is all I have.

Q. For the year ended December 31, 1933?

A. Yes, sir.

Q. You will get the figures from your work-sheets as to the rate of depreciation of the South Texas Gas Company prior to the period that you gave us to-day?

A. Yes. That is from April 10, 1928, to March, 1930?

Q. Yes.

A. Yes, I will get those.

Mr. Lange: I believe that is all.

Recross examination.

Questions by Mr. Coates:

Q. Mr. Lewis, do you know from your examination of the books of account of these companies in what year the control and management of these properties were transferred by the Moody-Seagraves interesfs to the Electric Bond and Share interests?

A. It was about the first of June, 1930; I am not sure of the exact date.

Q. Now, that was at or about the time, or within a year of the time of what is commonly known and described as the present depression, was it not?

A. Well, the depression started for some of us a good deal earlier than it did for others.

[fol. 1089] Q. But generally speaking——

A. Generally speaking, the depression started in 1929.

Q. All right. Now in order to—by the way, were any surplus accounts of these particular companies transferred with the properties?

A. You mean in April, 1928?

Q. No, I am talking about in 1930?

A. Well, there was no actual transfer of properties, so far as these two companies are concerned; it was an exchange in ownership of stock.

Q. Now, Mr. Lewis, as an accounting proposition, in order to have available amounts to set aside in a reserve for retirements and replacements, or for depreciation, you have got to have earnings for the accounting period after the payment of all costs of operation and after the payment of

bond interest, sinking fund requirements, and all other fixed charges, haven't you?

The Witness: Will you read the question, please, Mr. Reporter?

(Thereupon the Reporter read the last preceding question, as follows: "Q. Now, Mr. Lewis, as an accounting proposition, in order to have available amounts to set aside in a reserve for retirements and replacements, or for depreciation, you have got to have earnings for the accounting period after the payment of all costs of operation and after the payment of bond interest, sinking fund require-
[fol. 1090] ments and all other fixed charges, haven't you?")

A. The theory of depreciation reserves is to charge against the earnings each year a comparatively equal amount, so as to care for the retirements when they become necessary. This charge ordinarily is made to an operating account, which in turn is closed to surplus, so that if the company earnings before depreciation are not enough to take care of that reserve provision it would result in a transfer of a deficit figure to surplus.

Q. And if you do not pay the interest and sinking fund requirements on your bonds, why, those bonds are in default and you are subject to foreclosure, aren't you?

A. Yes, sir.

Q. Now, haven't you ascertain- it to be a fact that for several years these companies have been providing for their retirements and replacements by a retirement fund estimated to be sufficient to cover the retirements budgeted for the particular year?

A. That is my understanding of the method now employed by the companies.

Q. And have you ascertain- whether for 1933—1932 or 1933 these companies paid any income tax?

A. The taxes of the system, I understand—I haven't seen the tax returns—are filed as consolidated returns, but the
[fol. 1091] earnings of the South Texas Gas Company, particularly, would indicate that it was never subject to any income tax.

Q. You examined, for the purpose of determining gas deliveries through the Jennings-Pescadito line for the twelve months ended July, 1932, the purchase invoices, did you?

A. The invoices which were made to the South Texas Gas Company by the company selling the gas.

Q. Is it your testimony that no gas came through the Jennings-Pescadito line for Laredo in the month of March, 1932?

A. The purchase invoices of gas do not indicate any deliveries; there might have been some.

Q. Now, did you examine the charts on that Pescadito check-meter, or the records of such charts in the Measurement Department?

A. No, I didn't. I confined my examination in those years where the purchase invoices were rendered to the information contained on the invoices.

Q. And made no examination of the records in the Measurement Department to see whether any gas passed through that Pescadito check-meter in the month of March, 1932?

A. I didn't make any check at all of the Pescadito check-meter that year.

[fol. 1092] Q. Your attention was directed to the records in the Measurement Department as early as October or November, 1932, was it not, Mr. Lewis?

A. It was necessary this last year to examine those records, for the reason that since the South Texas Gas Company had merged with the United, and the Texas Border Gas Company also had merged with the United, the deliveries of gas to the town borders were no longer billed through invoices; so that in order to get the volumes delivered I had to check the Chart Department to get the information.

Q. For what period?

A. For the year ended December 31, 1933.

Q. But you did not check it for the twelve months ended July—didn't check the records in the Measurement Department for the year ended July, 1932?

A. No, sir.

Q. During either of the two periods, the year 1933 or the twelve months ended July, 1932, did you ascertain whether any gas was delivered from the Carolina-Texas field except into the Carolina-Texas Laredo line—that is, from wells connected with or under purchase contract by United?

A. No; I was interested only in the gas delivered to the old South Texas Gas lines, so that I made no examination [fol. 1093] at all of any gas deliveries in the Carolina-Tex field, other than to the Laredo line.

Q. And by your reference yesterday to deliveries from Bruni you did not mean to state that gas was being delivered from Carolina-Texas to Bruni and then down to Jim Hogg Junction during the period 1933 or the period ended July, 1932?

A. I don't remember making any reference at all to gas deliveries from Bruni.

Q. Well, I have it in my notes; perhaps you didn't. But from your investigation of deliveries from the Carolina-Texas field, both for the year 1933 and the year ended July, 1932, from wells connected with and under purchase contract with United companies, having been delivered into the Carolina-Texas Laredo line?

A. I don't know, Mr. Coates, whether there was any gas delivered to any other line or not.

Q. You don't know about that?

A. But all of the deliveries that I have checked were made to the Laredo line.

Q. At least in those periods you have not found any deliveries that were made to any other than the Laredo line?

A. No, because I was interested only in the gas deliveries to the old South Texas transmission lines.

[fol. 1094] Q. And during those two periods that I have been inquiring about that gas bore a gathering charge of one cent per M.C.F., did it not?

A. Yes, sir.

[fol. 1095] Q. Mr. Lewis, I show you what purports to be Journal Voucher No. J-10-157, and ask you if that is the Journal voucher which you examined with respect to the entry that you testified about of $934,000.00? (Which voucher was marked for purposes of identification only by the reporter "H.B. 3/23/34.")

A. Yes, it appears to be the voucher.

Q. Mr. Lewis, have you made the computations that you were asked to make with reference to transmission operations and maintenance expense on a three inch equivalent and lineal miles basis?

A. Yes.

Q. Please state the result of your computations into the record.

A. The transmission system operating expense per lineal mile, to the Jennings-Roma line was $276.69. To other lines in the South Texas area, $41.87. The transmission system

operating expense in terms of three inch equivalent miles, to the Jennings-Roma line, amounted to $69.52; and to the other lines in the district, $19.79. These figures are of course using the expenses as I have allocated them and the mileage figures furnished by the company.

The transmission system maintenance expense, to the Jennings-Roma line, amounted to $191.44, per lineal mile, and to the other lines, it was $28.97 per lineal mile. Expressed in three inch equivalent miles, to the Jennings-Roma line it was $48.10, and to the other lines $13.69.

Q. Now, in every case where you reduced those expenses [fol. 1096] to a common denominator, that is, three inch equivalent, the operations and maintenance expense per mile of three inch equivalent is four times or more for the Jennings-Roma line what it is for these other lines in the South Texas area?

A. According to the mileage figures furnished me——

Q. And that is not on a lineal mile but that is on three inch equivalent mile bases.

A. Well, it is hardly four times. It is between three and four.

Q. What is the maximum ratio?

A. The operations on the three inch equivalent miles is a little over three to one, and maintenance expense about four to one or a little over four to one.

Q. That's all.

Mr. Lange: That's all; we have no further questions.
The Court: Stand aside, Mr. Lewis.

(Witness excused.)

Henry E. Elrod, a witness for the Plaintiffs, being by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Please state your name, age, your present place of residence and your occupation.

A. My name is Henry E. Elrod. I am 56 years old. I live [fol. 1097] in Houston, Texas, and I am a consulting engineer.

Q. Is that your occupation at the present time?

A. Yes.

Q. How long have you pursued that profession or occupation?

A. Practically since my graduation from school; or rather, I will modify that by saying that I graduated from school in 1901, and I followed my profession until 1912, when I entered the practice of my profession as a consulting engineer.

Q. What degrees, if any, do you hold, Mr. Elrod?

A. Bachelor of Science, in Electrical Engineering.

Q. From what school did you receive that degree?

A. From the Agricultural & Mechanical College of Texas.

Q. Will you state what has been your experience, or what character of work you have been engaged in from 1912, when you state you began actively to work in your profession.

A. Municipal engineering. Municipal utilities, such as water works and sewers, and light and power plants, and appraisals and street paving, and every type of engineering that had to do with municipal welfare.

Q. Has that work been done entirely in behalf of municipalities or privately owned interests, as distinguishing municipal from privately owned interests.

A. It has always been in the public interests—that is, for the municipalities as against private interests.

Q. Will you state the projects and the character of the projects that you had occasion to do this work on or for, in [fol. 1098] that period beginning with 1912 to now?

A. Since 1912 and to the present time, I have constructed or designed and supervised the construction of thirty water works systems, thirteen dams for water supplies, eleven reservoirs for impounding water, thirteen water filtration plants, nine deep wells, ten water supply reports, twenty-five sewer systems, forty-seven sewage treatment plants, thirty-four municipal paving programs, four county highway systems, the appraisal of thirty-four public utilities, sixteen geologic reports, eighty-four technical reports of various characters, totaling 324 engineering commissions.

The details of the work on water works systems for various towns in Texas and California and sewer systems, I estimate I supervised the construction—not all personally of course, but generally under my supervision—of approximately three million lineal feet of trenching and backfilling

or over five hundred miles. The dams I built consisted of earth works, concrete work, steel work and so forth. The public utility appraisals, were made as follows:

At Alba, Texas, water works system, for purchase. At Amarillo, Texas, water and light power company, for rate purposes—that was a federal case; that is, the case found its way into the federal court and I testified in that case. The appraisal of the Brunner, Texas, water works system for purchase by the City of Houston.

Coleman, Texas, the sewer system, for purchase.

[fol. 1099] Galveston, Texas; the Galveston electric and street railway properties, for rate purposes.

Brush Electric Company, at Galveston, light and power properties, for rate purposes.

The Galveston Gas Company, which was an artificial gas company, for rate purposes.

The Galveston Wharf Company, for purposes of taxation.

Gorman, Texas, water works system, for purchase.

Honey Grove, Texas, water works system, for purchase.

Houston Gas & Fuel Company, for rate purposes.

The Southwestern Bell Telephone & Telegraph Companies for rate purposes.

The Home Telephone Company, automatic telephone, at Houston, for rate purposes.

Houston Light & Power Company, for rate purposes.

Houston Electric & Street Railway Company, for rate purpowes.

Hubbard, Texas, water works system, for purchase.

Jacksonville, Florida, investigation of properties and operation of Jacksonville, Florida Municipal Light & Power Company, for City of Houston, for comparison.

Lockhart, Texas, water works system, for purchase.

Longview, Texas, Longview Light & Ice Company, for rate purposes.

Malone, Texas, water works system, for purchase.

Merkel, Texas, Electric Light & Power Company, for rate purposes.

[fol. 1100] Paducah, Kentucky, water works, for rate purposes.

Port Arthur gas works, for purchase; and that was an artificial gas works.

Ranger, Texas; Ranger Water Company, for purchase.

San Angelo, Texas, electric light and water works, for purchase.

San Marcos, Texas; San Marcos Utility Company, for rate purposes, and that was water works.

Taylor, Texas; the sewer system, for purchase.

Temple, Texas; Temple Gas Light Company, for rate purposes, and that was an artificial gas plant.

Tyler, Texas; the sewer system for purchase, and the water works system for purchase.

Wichita Falls, Texas; the Wichita Falls Gas Company, for rate purposes.

Dallas, Texas; the Dallas Telephone Company for rate purposes.

The total values involved in the above mentioned appraisals were approximately $100,000,000.00.

Q. Mr. Elrod, you stated that you are engaged in that work or profession at this time?

A. Yes.

Q. Were you so engaged during the years of 1931 and 1932?

A. Yes.

Q. And also in 1933?

A. Yes.

[fol. 1101] Q. Just state briefly what work, or when you began your work in connection with this Laredo rate case, and what you did.

Mr. Coates: May I ask Mr. Elrod a few questions along the line of his qualifications?

Mr. Lange: Yes, sir.

The Court: I think it would be permissible, yes.

Questions by Mr. Coates:

Q. Mr. Elrod, have you ever engaged in any responsible capacity in the operation of a natural gas property?

A. No, sir.

Q. Have you ever been engaged in a responsible capacity in constructing a natural gas property?

A. No, sir.

Q. And have you ever been engaged in a responsible capacity in the purchase of gas pipe or fittings?

A. No, sir.

Q. Mr. Elrod, you say you are a consulting engineer. Now are you an accountant?

A. No, sir.

Q. And you have had no experience as a practical operating man of gas properties?

A. No, sir.

Q. Are you a lawyer?

A. No, sir.

Q. Then you qualify here simply as a consulting engineer?

A. Yes.

[fol. 1102] Mr. Coates: We may have an objection, but we will make it at the proper time.

The Court: All right; go ahead, gentlemen.

Questions by Mr. Lange:

Q. Read the question I just asked, Mr. Reporter.

(Whereupon, the following question was read: "Just state briefly what work, or when you began your work in connection with this Laredo rate case, and what you did.")

A. I was first employed by the City of Laredo, by contract, on February 17, 1932, to assist the City's engineer in the preparation of an appraisal of the properties of the Texas Border Gas Company and the South Texas Gas Company, which are units of the United Gas System. At that time, the appraisal had already been made by the City Engineer, and I was simply to act as consultant with him in connection therewith and its presentation at a hearing to be held before the Railroad Commission. My second employment by the City of Laredo, was in the month of October, 1932, at which time I was engaged to prepare a new appraisal of the properties of the two companies just mentioned.

Q. And then what character of work, if any, did you do in connection with this appraisal.

A. I prepared an appraisal of the properties, based upon an inventory that was prepared by Mr. Neff and composed with the company's inventory, so that the items of property were reconciled.

[fol. 1103] Q. Have you since that time prepared an appraisal of the properties serving Laredo?

A. Yes, I have. Late in November, I was called upon by the City.

Q. November of what year?

A. November of the past year, 1933; I was called upon by the City of Laredo to prepare a new appraisal on the basis of prices as of December 31, 1933, and I prepared that inventory—or rather, that appraisal.

Q. I will ask you whether this is the appraisal which you have prepared?

A. Yes, it is.

Mr. Lange: We desire to offer it in evidence.

Mr. Coates: One or two futher questions, for the purpose of laying a predicate. Mr. Elrod, does the appraisal which you have identified and which you hold in your hand, represent your engineering estimate as to what it would cost to reproduce similar properties, if built under existing conditions, at the present time?

A. No, it does not. It purports to represent what the present properties are worth, as of December 31, 1933. That is, the identical properties.

Mr. Coates: Does it purport to represent the historical cost of those properties?

A. No, sir.

Mr. Coates: Are you offering this, Mr. Lange?

Mr. Lange: Yes, we desire to offer this appraisal in evidence.

[fol. 1104-1109] Mr. Coates: To which the defendant objects——

A. I did not quite finish my answer.

The Court: All right; go ahead.

A. It does purport to show, or rather the properties were priced out in view of the history of the company. It is not a historical reproduction, however. It is priced out on the basis of prices as of December 31, 1933, in view of the history of the company as it existed from 1910 on.

* * * * * * *

[fol. 1110] Questions by Mr. Lange:

Q. Mr. Elrod, please state how you proceeded in making the appraisal of the properties of the Texas Border and South Texas Gas Company, predecessors of the United Gas [fol. 1111] Public Service Company, now the owners of the property.

Mr. Coates: It is understood that our objection goes to this line of testimony.

A. In making the appraisal of the properties I endeavored to reproduce identical properties in the manner that they were originally produced, at present day prices; in other words, taking the properties as I found them, and in the light of such history and knowledge that I had of them, I applied the current prices to represent as nearly as possible the fair value of the Gas Company's properties as of December 31, 1933, in the reproduction of a substituted plant.

Mr. Coates: We renew the objection to all testimony relating to what is fair value of the plant, for each and all the reasons stated in our objection to this exhibit and in our objection to the particular part of the exhibit on page C thereof.

The Court: You are speaking of this exhibit now?

Mr. Coates: Yes, to Plaintiffs' Exhibit 9.

The Court: You understood, Mr. Coates, that there was one specific item that is objectionable and they withdrew it.

Mr. Coates: He stated his intention was to reflect and show the fair value of the property. We are objecting to that, and move that it be stricken and that the Court instruct the jury not to consider it.

The Court: I got confused. I thought you were referring [fol. 1112] to his testimony. The objection is overruled.

Mr. Coates: Note the exception.

Q. Now, Mr. Elrod, in proceeding to make that appraisal did you use prices of labor and material as of December 31, 1933?

A. I did.

Q. Turning to page A of Exhibit 9, headed "Allocation", I will ask you first whether the properties appraised lay all or just partly within the city limits of the city of Laredo?

A. Just partly within the city limits of the city of Laredo.

Q. Was it, therefore, necessary to allocate parts of the property out of the city?

A. Yes.

Q. In making this appraisal?

A. Yes. The transmission lines serve other communities as well as Laredo, and the distribution system inside the city serve outside the city as well as inside.

Q. Did you make an allocation of the properties?

A. I did.

Q. Serving the city?

A. I did.

Q. Referring to page A of the exhibit, explain it.

A. I took the total volume of gas in thousand cubic feet as provided by the Auditor for the year ended December 31, 1933, and the total volume of gas delivered to the city gate, divided the total volume of gas delivered to the city gate by the total volume of gas, which gave a percentage of [fol. 1113] the volume of gas to Laredo proper, which was 68.18 per cent.

Q. As appears on page A?

A. Yes.

Q. Does that refer to the transmission system properties?

A. That refers to the transmission system properties.

Q. Allocated to Laredo?

A. Yes, sir.

Q. Now, how did you proceed in reference to the distribution properties allocated to Laredo?

A. The distribution system is allocated on the proportion of volumes of gas inside and outside the city and the intermediate pressure system.

Q. Now, why did you use that method of allocation?

A. Well, that was the most logical method that we had to use, the closest bearing on the values or the proportion of property utilized. Perhaps we could have gotten it better if we had had the demand or knowledge of the demand inside and out, but we didn't have that.

Q. You didn't have the demand or load factor?

A. No, sir.

Q. To use. Then, how did you proceed in making the allocation with reference to the distribution system properties located inside the city of Laredo?

A. We took the total volume of gas in thousand cubic feet, the volume of gas inside the city in thousand cubic feet, the volume of gas outside the city in thousand cubic feet, [fol. 1114] divided the volume of gas outside the city by the volume of gas inside the city, which gave a percentage of 70.85 of the total as being allocatable to inside the city.

Q. Now, how did you proceed further in applying those allocations?

A. The percentage arrived at was 70.85. The appraised value of the intermediate pressure system was $91,397.00.

Q. Right there, explain what you mean by "the intermediate pressure system".

A. The intermediate pressure system is a system of eight inch pipe principally that passes through the city and distributes gas to the low pressure system. It also delivers gas to the outside of the city distribution system.

Q. Then in what way did you apply the factors in connection with the system?

A. Well, I took 70.85 per cent of the $91,397.00 to give the portion of the intermediate pressure system allocated to Laredo, which was $64,755.00.

Q. That gave you a total——

A. Added to the total of $506,399.00, which was the total appraised value of the distribution system, less intermediate pressure system, we get the total value of the distribution system allocated, which is $571,904.00; that is before depreciation.

Q. Then, what do the figures at the bottom of page A reflect, proceeding further?

[fol. 1115] A. They reflect a weighted average per cent for depreciation.

Q. What do you mean by "weighted average per cent"?

A. Well, the total figures in dollars divided—that is, the total allocated figures in dollars divided by the total appraised value will give the weighted per cent of both properties.

Q. Allocated to Laredo?

A. Allocated to Laredo.

Q. What is that weighted average per cent?

A. 85.27.

Q. That is reflected on page A of the exhibit?

A. On page A of the exhibit.

Q. And that is the per cent that you utilized in preparing this appraisal?

A. The allocated total properties to Laredo.

Q. Do you think that fairly represents the per cent to be applied to allocated properties used inside the city?

A. Yes, sir.

Q. In this case. Referring to page B of the exhibit, Mr. Elrod, "General Summary and Allocation, Transmission System", and then the headings of Cost New, Condition Per cent, and Cost New Less Depreciation. Explain those three

—what those designations are: first, Cost New, then Condition Per Cent, and Cost New Less Depreciation.

A. Well, we obtained first, of course, the cost new of the total properties.

[fol. 1116] Q. How did you go about doing that?

A. By preparing the inventory and pricing out the inventory items.

Q. Of the entire properties?

A. Of the entire properties, and then applying the per cent condition to the cost new to get——

Q. How did you arrive at the per cent condition of the properties?

A. By consideration of the age and life of the properties and inspection of its condition.

Q. An actual inspection of its condition?

A. An actual inspection, in conjunction with knowledge of the age and life of the various units of the property.

Q. Then you applied that per cent condition to the cost new?

A. Which gave the depreciated cost, or rather the cost new less depreciation.

Q. Or present per cent condition?

A. Or present per cent condition.

Q. On the transmission system, what does page B reflect on that?

A. It reflects the cost new, $359,128.00, and the depreciated cost, $263,063.00.

Q. And distribution system?

A. Distribution system, $597,736.00 new and $470,488.00 depreciated, or a total of $956,864.00 new and $733,551.00 depreciated.

Q. To those figures, how did you apply the allocation factors?

[fol. 1117] A. The last item about half way down the page before the division mark is noted Balance for Allocation of $897,471.00.

Q. How did you arrive at that total?

A. That was arrived at by deducting from the original total of $956,864.00 sums for property already allocated, which was furniture and fixtures, auto and equipment, and tools and equipment, and deduction of an amount for excessive purchase and storage, leaving a balance of $897,471.00 to be allocated to Laredo on the basis of 85.27 per cent.

[fols. 1118-1170] Q. $897.471.00 reflects the cost new——

A. Cost new.

Q. —as of December 31, 1933.

A. Yes.

Q. And the figure $686,923.00 represents the per cent condition—that is, the cost new less depreciation?

A. Yes.

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[fol. 1171] Q. Then the total direct structural costs of the properties serving Laredo are how much?

A. The total allocated to Laredo is $783,712.00 cost new, and $596,524.00 cost new less depreciation.

Mr. Coates: It is understood that the objection which we made to the exhibit goes to all this testimony?

The Court: Every place you mention it it will be applied, Mr. Coates.

Mr. Coates: All right, but I am not applying it to this summary sheet here, which, obviously, is less than the opinion and order that they declare on.

The Court: Very well; a full bill will be allowed you.

Mr. Coates: Note our exception.

Q. Mr. Elrod, in addition to the direct structural costs of the properties that you have just testified about, have you also computed and taken into consideration intangibles also known as structural overheads that are involved in the [fol. 1172] construction or the reconstruction of this property?

Mr. Coates: We object to the term "intangibles", because it is an erroneous legal designation.

Mr. Lange: I disagree with Mr. Coates; it has been termed that way time and again in the books.

The Court: Now, wait just a moment. I want the Reporter to read the question to me.

Mr. Coates: And because it calls for the legal conclusion of this witness as to what constitutes "intangibles".

(Thereupon the Reporter read the last preceding question as follows: "Q. Mr. Elrod, in addition to the direct structural costs of the properties that you have just testified about, have you also computed and taken into consideration intangibles also known as structural overheads that are involved in the construction or the reconstruction of this property?")

The Court: I will sustain the objection; It is not up to him to determine what are intangibles.

Q. Well, I will ask you this, then, Mr. Elrod,—in the reconstruction of this property are there any other items of cost that would be included?

A. Yes, in the promotion and construction of practically every utility there are certain costs which are directly connected with the structural—the direct structural costs, as [fol. 1173] the cost of materials, and cost of labor, which costs can not be identified with any particular item, such as the preliminary and organization expense, and engineering and supervision during construction, and administration and legal during construction, and taxes during construction, and interest during construction. I have given consideration to all of those items because they have been costs that were no doubt borne by the Company in the pre-operation period or the period during construction, and which could not be at least totally taken care of in current operations.

Q. Turn to page 2 of that General Summary and Allocation of the exhibit—turn to page B of Plaintiffs' Exhibit 9—following the totals of the properties allocated to Laredo—direct structural costs of properties allocated to Laredo, you set up the item of Preliminary and Organization.

Mr. Coates: Now, we object.

The Court: Now, that is on what page—page D?

Mr. Lange: Page B, the second letter.

The Court: I see.

[fol. 1174] Mr. Coates: We object to this testimony and to the items which are now sought to be testified about, because no proper predicate has been laid in that the witness has not stated that these are the costs and the amount of the costs of this character which in his judgment would be incurred if the property were constructed today.

The Court: That can easily be corrected by a question; it will take you just about a minute to do that gentlemen, if this witness knows anything about that; I will sustain the objection unless you care to do that.

Mr. Lange: Well, we will ask the witness that question.

The Court: All right.

Q. In connection with this item set up on page B of your exhibit, preliminary and organization, engineering and supervision, administration and legal, taxes during construction and interest during construction, I will ask you whether the amounts set up by you on that page in your opinion would be the amounts that would be incurred if this identical property were reconstructed at this time?

A. I think so.

The Court: Gentlemen, you will pardon me, but I just can't find what you are talking about in my book.

Mr. Lange: Here on page B.

The Court: I have it now, thank you.

Q. Now, in your opinion, they would?

A. These are presumed to be or purport to be the costs at [fol. 1175] this time of the services under each item that would be rendered if the property were to be reconstructed at this time. I can not quite conceive of a situation where a plant would have to be blotted out and reconstructed, but the history of the situation would have to enter into the matter as to what would obtain. For instance, these costs in the percentages outlined would apply or would be applied to the original cost of the property, in 1910, which was approximately $167,000.00, and the same percentages applied now would of course represent very much larger expenditures on present day prices.

Mr. Coates: For the purpose of laying a predicate for further objection: Mr. Elrod, do the amounts which you have shown on page B of plaintiff's Exhibit 9, represent your judgment as to the dollar amounts of expense which would be incurred for preliminary and organization expense, engineering and supervision, administration and legal expense, taxes during construction and interest during construction which would be incurred if these properties were reconstructed at the present time?

A. I can not answer that question Yes, without modification to the effect that it would represent my judgment as to what the costs would be if the properties were constructed in the same manner as they were constructed.

Mr. Coates: Do you mean piecemeal over a 22 or a 23 years period?

A. Yes.

[fol. 1176] Mr. Coates: We renew our objection.

The Court: Overruled.

Mr. Coates: Note our exception.

Q. Proceed, Mr. Elrod, and give each item as you have made provision for it; we will not use the word "allowed".

A. Well, as I have said, there is no question but that some expenditure was made originally for preliminary and organization expenses, and in viewing the history of the situation to get at what a reasonable cost at that time would have been——

Mr. Coates: At that time?

A. — to bring down to the present as a percentage, we find that there was no very great amount of money spent at that time as there would not be now, because those things just are not done any more, but in 1908, when a well was being drilled for water on the Reiser ranch, about 22 miles east of the city, gas was encountered and a successful gas well was completed, and Mr. Reiser, I believe, and a Mr. Johnson, according to the records, applied for and received a franchise, in February——

The Court: Is that important, when that was done?

A. I think not.

The Court: Leave it out, then.

A. Anyhow, they paid nothing for the franchise, and——

Mr. Coates: Do you know that of your own knowledge?

A. No.

Mr. Coates: Then we move that the statement be stricken, that they paid nothing for the franchise.

[fol. 1177] The Court: The statement will be stricken, and (to the jury) gentlemen, you will in no way consider the statement of the witness that no consideration was paid for the franchise.

A. In view of the situation, I arrived at two percent of the then cost, as being representative of the fair cost paid at that time for the preliminary and organization expense, and two percent of the same thing at this time would represent $15,674.00, which I believe would be entirely adequate for preliminary and organization expense for a project of this size and under the circumstances.

Q. Then the next item, of engineering and supervision?

A. The next item, of engineering and supervision, was treated in very much the same way. Prior to the operation

of the company's properties, they no doubt had to employ an engineer and pay for his services, which was a charge to capital account. After the properties were put into operation, until 1928, with the exception of two engineering reports having to do with gas production, I believe, and one an appraisal report, there was no engineering charged to capital account, so far as——

Mr. Coates: Just a minute; now are you testifying as to what the books of the company show?

A. I am testifying as to what has been told me by my auditor with respect to the situation.

Mr. Coates: We objects to it as hearsay.

The Court: If he doesn't know himself; if it is hearsay; he can not testify to it.

[fol. 1178] Mr. Lange: He is testifying as to what was testified to in this case.

The Court: No, I understood him to say that he is testifying by what was told to him by his auditor.

Mr. Stout: He was working under the direction of Mr. Elrod, and working with him.

The Court: That wouldn't make any difference; my son is working with me, but I couldn't testify to something he might tell me.

Mr. Stout: We raised no objection to their Mr. Biddison's testimony, and he said he took Mr. Green's figures and said he had never been in Laredo.

Mr. Coates: No, he didn't say that. We move to strike that testimony to which the objection has been raised, and move the court to instruct the jury not to consider it.

The Court: Read that last part of the answer.

(Whereupon the following was read to the court: "After the properties were put into operation until 1928, with the exception of two engineering reports having to do with gas production, I believe, and one an appraisal report, there was no engineering charged to capital account. * * *")

The Court: Now was that what you say your auditor told you?

A. Yes.

The Court: That is stricken, and you will pay no attention to it, gentlemen of the jury, because it is purely hearsay and the witness admits it is.

[fol. 1179] Q. Referring back to that item of engineering and supervision, in your opinion would the amount set up by you of $19,593——

A. In my opinion, and in view of the knowledge I had of the situation, I believe 2½ percent, or $19,593.00 is adequate for the engineering work that was done.

Q. Or that would be done at this time?

A. Or that would be done at this time.

Mr. Coates: And that would be the engineering cost which would be incurred if these properties were reconstructed at this time.

A. As they were originally constructed.

Mr. Coates: If they were reconstructed at this time?

A. I am not assuming the properties are reconstructed at this time, because I can not conceive of a condition that would blot them out and necessitate their reconstruction. The fact of the business, however, was that engineering charges were paid for through operating expense, if there were any engineering charges paid.

Mr. Coates: Now, we move to strike that answer, because it is wholly immaterial to any issue in this case and it is obviously hearsay on his part, since he states he has not examined the books.

The Court: Let me ask him this question: Did I understand you to say that this two and one-half percent you have down here for engineering and supervision represents the amount which in your judgment as an engineer, after your [fol. 1180] inspection of the property and what you found out about it, is adequate for a reproduction of the property at this time, as it was constructed, when it was constructed?

A. Yes.

The Court: I overrule the objection.

Mr. Coates: Now, by that, you mean as it was constructed by piecemeal over a 22 year period?

A. Yes.

Mr. Coates: Then we renew our objection, because that is obviously not reproduction cost.

The Court: I have overruled it.

Mr. Coates: Note our exception.

Q. Proceed with the next item, Mr. Elrod, administration and legal expense; you have made provision of $11,756.00 for that item, have you not?

A. Yes, in my judgment that is adequate for legal and administration costs.

Mr. Coates: It is undestood our objection goes to all this line of testimony?

The Court: Yes.

Mr. Bobbitt: May we not understand that Mr. Coates just objects to everything?

The Court: No, sir; we do not understand that. Mr. Coates has not objected except where he wanted to and he has then stated it.

Q. The next item you have is taxes during construction, $3,919.00?

[fol. 1181] A. That is one-half of one percent of the total structural costs including land.

Q. And the next item of interest during construction; explain that item.

A. It is figured at 3½ percent. I have taken the construction period at one year, although the plant was really constructed in much less than a year, according to the testimony.

Q. I will ask you right there, if in your opinion the plant could be reconstructed in one year or less?

A. Yes, I think it could be constructed in one year or less.

Q. How did you compute this interest during construction?

A. At seven percent, for the cost of money, and the work progressing in reasonably even volume from the first month to the last month, making an average of there and one-half percent for the interest during construction.

Q. And that is $27,430.00?

A. Yes.

Q. Now, with reference to the items of administration and legal expense, engineering and supervision and interest during construction, your exhibit reflects first the cost new, and then the depreciated cost; is that correct?

A. Yes.

Q. On page 2 of each of those items?

A. Yes, those items depreciate along with the property that they are inherent with.

Q. Now, turn to page C, immediately following. You [fol. 1182] have the item of materials and supplies, cost new $19,744.00. Where is that taken from?

A. That is taken from page 56 of the transmission section, and page 96 of the distribution section.

Q. The total of the two?

A. That is correct.

Q. And is not depreciated?

A. It is not depreciated.

Q. Then, continuing further, you have an item called working cash 45 days of annual operations expense, less gas purchased. Will you please explain that item?

A. Well, the company must have some working cash with which to pay current bills and salaries, before the collections are made and so forth, each month, and they are entitled, or are usually allowed——

The Court: Let's leave out the "allowed."

A. Usually you give them 45 days of annual operating expense.

Mr. Coates: We object to the testimony as to what the companies are usually given.

The Court: Confine it to your judgment and experience as to what amount should be taken in this case.

Mr. Coates: And that answer should be stricken.

The Court: It will be stricken.

Q. In the light of your experience, what do you think is the correct amount that should be apportioned for that?

A. I think one-eighth of the annual operating expense, [fol. 1183] less gas purchased, which purchases are made from an affiliated company, or 45 days operating expenses, is sufficient. Of course, I have not had experience in operating a gas company, but I have had experience in managing large businesses, and I believe from my judgment that that is an adequate amount.

Mr. Lange: May we have a short recess.

The Court: We will take ten minutes recess.

(Recess had from 3:30 to 3:40 p. m.)

Q. Mr. Elrod, at the time the Court recessed, you were called upon to explain the item appearing on page C of the plaintiff's Exhibit 9, working cash, 45 days of annual operations expense less gas purchases. On that item you stated you had made provision for the sum of $9,788.00?

A. Yes.

Q. That is not depreciated?

A. No.

Q. Now, the figures on page C, totaling $891,616.00. What does that figure represent?

A. That figure represents the cost new as of December 31, 1933.

Q. Of what properties?

A. Of all of the properties of the defendant companies, used and necessary for serving gas to the City of Laredo.

Mr. Coates: Now, we object to that question, because it obviously calls for a conclusion of the witness, and no proper predicate is laid by showing he knows what properties are used and useful by the city of Laredo, and calls for a deter-
[fol. 1184] mination of an ultimate issue to be determined by the court and the jury.

The Court: I don't believe I got that question; read that question.

(Question is read to the court, and answer.)

The Court: You are answering that question on the basis of your judgment and experience as an engineer?

A. Yes.

The Court: Overrule the objection.

Mr. Coates: Note our exception, and we object for the further reason that the proper test is the property used and useful and not the property used and necessary.

Mr. Lange: That is a matter of opinion, too.

The Court: Overruled.

Mr. Coates: Note our exception.

Q. Now, the figure $690,261.00, that is under the column headed cost new less depreciation. That is the depreciation amount of the $891,616.00?

A Yes, that is the cost new less depreciation.

Q. Now, Mr. Elrod, in appraising these properties, I will ask you as an engineer, how did you appraise these properties?

A. I appraised them as a going entity, as properties in operation with buiness attached and connected to gas wells.

Q. In making this appraisal, Mr. Elrod, of these properties, you did not in this appraisal include any items composing what is known as the Jennings Pescadito transmission line, did you?

[fol. 1185] A. No, I did not.

Q. Why—give your reasons fully as an engineer.

A. In my judgment as an engineer and in view of my study of the situation and of the company's properties, I

did not feel that the Jennings Pescadito line was necessary to serve the city of Laredo, and the cost of maintenance was a burden that should not be imposed upon the city and the city should not be called upon to bear the principal of the cost, as a part of the rate base.

Mr. Coates: Now, just a minute; we object to that answer and move that it be stricken out, because obviously the reasons which he gave in support of his conclusion are not legally sufficient to support the conclusion he gave, and because no proper or sufficient or legal predicate has been laid for the conclusion stated, and because it states the legal conclusions of the witness with respect to these matters and not his engineering judgment.

The Court: Well if he stated it as a legal conclusion, it should be sustained, but I did not so understand it.

Mr. Lange: He said as his engineering opinion.

The Court: I overrule the objection.

Mr. Coates: Note our exception.

Q. Mr. Elrod, in connection with your appraisal in this case, did you ever have occasion to make an examination of the condition of that Pescadito Jennings transmission line?

A. Yes, I did.

[fol. 1186] Q. How did you go about it and when? Give all details in full, and if a proper predicate has not been laid, we want to lay it now.

A. On February 8th of this year, in company with Mr. Heins, the city engineer of Laredo, we went over the line from the junction of the highway or road to the camp at Jennings Junction and inspected the line all the way through.

Q. Now then, so the court and jury may understand the line we are speaking of, is the line that begins at the Pescadito check meter on this map the one?

A. Yes.

Q. And runs 26.68 miles down to what is termed Jennings Junction?

A. Yes.

Q. Is that correct?

A. Yes.

Q. A six inch line, the entire distance; is that correct?

A. That is correct.

Q. Proceed with your explanation.

A. We started about half way along the line, or just about the point on the map where the figures 26.68 miles are, where the road from Aguilares comes into the line, and followed it down to the Jennings camp, which is at the Junction of the Jennings Pescadito line, and the line which goes in a northeasterly direction through Jim Hogg Junction, inspecting the line going and coming. On another trip, we made similar inspections, but not so far down. Prior to that, I had made an inspection of the line some [fol. 1187] distance down the line, as far as I could go, from Pescadito Junction, where that check meter is on the map and later on I had come back from the road leading from Aguilares Junction to the line in a northwesterly direction to about the point where I had reached the first time, so that I covered all the line once and part of the line twice.

Q. What number of inspections did you make on that line, either you or those working under you and under your supervision?

A. Well, I don't know.

Q. Approximately the total number of inspections?

A. I could not make an approximation of the total number of inspections that we made. We made inspections at every hole that was open and every place that the pipe had been bared by erosion or otherwise, and some holes were dug in the first instance in connection with the investigation prior to the hearing in October and November of 1932.

Q. Do you have any memoranda that reflects the places of actual inspection with reference to mile posts along the line?

A. Yes, such as three big leaks between poles—mile 30 and pole 13, and mile 30 and pole 14; and from the gate, which is about three-quarters of a mile, from the Pescadito Junction to the gate, which is about three-quarters of a mile, there were eighteen leak clamps that I counted, and at pole 30 and 18, that is, mile post 30 and pole 18, there was one big leak that was whistling so that it could be heard for several pole lengths down the line. Then there was, from [fol. 1188] place to place, evidences of pipe having been taken out and replaced. The pipe at mile post 8, pole 18, was in bad condition, and at mile post 17, pole 18, there is a hot spot, five joints of pipe replaced. A clamp at mile post 16, pole 27, and a big leak at mile post 30, pole 22.

[fol. 1189] Mr. Coates: As of what date is this?

A. That was February 5th.

Q. Of what year?

A. Of this year. And there were clamps and leaks in two holes between poles 2 and 3, Mile 16; one section of pipe, 34-foot section, replaced between poles 25 and 26 on Mile 14; and one between poles 19 and 20 on Mile 14; two between 14 and 15, Mile 13; two between 5 and 6 on Mile 12; and one at Mile 11, pole 22. And then Mr. Heins made a list of—I seemed to have momentarily misplaced Mr. Heins' record.

Q. If you don't have it at this time, we can get it later.

A. I will get it for you.

Q. Do you have with you the join- report made by Mr. McGary and Mr. Greene, the Company's engineers, with reference to the per cent condition of that property?

A. Yes, sir. I have Mr. Heins' figures here now.

Q. You have Mr. Heins' figures?

A. Yes, sir.

Mr. Coates: Did you collaborate in making that?

A. Yes, sir.

Mr. Coates: Do you know whether what you are about to read is any duplication of what you have already testified to?

A. No, sir; it is not a duplication. Mr. Heins is here and can testify.

[fol. 1190] Mr. Coates: It doesn't cover any of the same?

A. No, sir.

Q. Go ahead, Mr. Elrod.

Mr. Coates: Please identify the mile posts, if you will.

A. At Mile 18, post 7, plus 15 feet, reconditioning of the pipe began, and this ended at pole 1, Mile 21, plus 165 feet.

Mr. Coates: When was that?

A. That was February 24th.

Mr. Coates: But when was the reconditioning?

A. The reconditioning was done during the summer of 1933.

Q. This is February, 1934?

A. Yes, sir. That distance is equal to 2.82 miles. At pole 16-27 plus 35 feet, 1 leak clamp; Pole 16-29, one 6-inch 36-foot old joint on ground.

Mr. Coates: You mean there was a joint of pipe lying along the right-of-way?

A. Yes, sir.

Q. That had been taken out of the line?

A. Yes, sir. We were checking up the test-holes that Mr. McGary had dug. He testified he dug one at every mile-post, and Mr. Heins' note is "apparently no test pit" at Mile 17. Mile 17, Post 17, four 6-inch 36-foot old joints on ground. Mile 17, Post 17, plus 160 feet, one leak clamp; Mile 17, Post 30——

[fol. 1191] Mr. Coates: If the Court please, we object to this testimony as being immaterial. The fact that there are joints of pipe taken out of the line along the right-of-way has to my mind no more relevancy to the existing condition of the line than the fact that there were a lot of railroad ties lying along the railroad right-of-way, which had been taken out of the track. It is the material in the line, or in the track, which shows its service condition and its service capacity, and not the property that has been retired and replaced; and I just fail to see the materiality of that character of testimony, and object to it as wholly irrelevant and immaterial, and not responsive to the question asked.

Mr. Lange: If the Court please, we are going to connect up the situation as now reflected with the report of their engineer and Mr. Greene's report of the nature of that line prior to the time it was reconditioned and at present, and connect it up and show what they found and what we found, and where they probably gave it a high condition, and the facts do not reflect that.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

Q. Proceed.

A. Mile 19, post 11, plus 50 feet, old pipe bridge, valueless.

Mr. Coates: What is a pipe bridge?

A. It is a bridge built of salvaged pipe across an arroyo [fol. 1192] or draw for the service cars to pass over in riding the line and working on it.

Mr. Coates: It has nothing to do with the line itself?

A. All the bridges are included in the appraisal and are part of the property. At Mile 20, Pole 2, old 20-foot pipe bridge, valueless. Mile 20, pole 13, plus 125 feet, another pipe bridge, valueless. Mile 20, pole 14, reconditioning site, approximately 105 pieces of pipe on ground. Mile 20,

pole 16, plus 100 feet, old 20-foot pipe bridge, valueless. Mile 21, pole 18, plus 15 feet, one leak clamp. Mile 22, pole 4, plus 25 feet, old 40-foot pipe bridge, valueless. Mile 22, pole 11, leak clamp; pole 12, plus 100 feet, leak clamp; pole 13 plus 150 feet, old 20-foot pipe bridge, valueless; pole 15 plus 125 feet, old 20-foot pipe bridge, valueless. Mile 23, pole 5, leak clamp. Mile 23, pole 9 plus 100 feet, leak clamp; pole 16 plus 30 feet, leak clamp; pole 19 plus 100 feet, leak clamp; pole 21 plus 75 feet, leak clamp; pole 22, leak repaired.

The Court: Is it necessary to go down this whole line?

Mr. Lange: They, in their report, give it a 95 per cent condition, and their engineer says it is still in that condition. This is the only way we can refute that, and we want to refute it step by step. This is the only way we can show its condition. We don't want to burden the record, but [fol. 1193] we want to put in all the evidences of its condition as determined from our actual inspection of it.

The Court: If you want to go into it mile at a time, or foot at a time, all right.

Mr. Lange: We believe it shows the careful and painstaking inspection that was made.

The Court: Go ahead. I was just hoping you could leave out a few joints of it, though.

Q. Go ahead.

A. Mile 27, pole 5 plus 30 feet, leak and leak clamp; plus 60 feet, 1 leak clamp; plus 75 feet, 1 leak clamp; plus 80 feet, 1 leak clamp; plus 185 feet, 1 leak clamp. Mile 27, pole 6, plus 90 feet, leak and leak clamp; plus 100 feet, 3 leak clamps; pole 11, plus 100 feet, 2 leak clamps; pole 12, plus 15 feet, 1 leak clamp; plus 145 feet, 1 leak clamp; plus 160 feet, 2 leak clamps; plus 175 feet, 3 leak clamps. Mile 27, pole 13, plus 25 feet, 4 leak clamps; plus 40 feet, 2 leak clamps; plus 100 feet, 1 leak clamp; plus 140 feet, 1 leak clamp; plus 180 feet, 1 leak clamp. Mile 27, pole 14, plus 70 feet, 2 leak clamps; plus 100 feet, 1 leak clamp. Mile 27, pole 16, plus 170 feet, 1 leak clamp; pole 17 plus 60 feet, 5 leak clamps; plus 100 feet, 1 leak clamp. Mile 28, pole 2, plus 70 feet, 1 leak clamp; plus 80 feet, 1 leak clamp; pole 4 plus 25 feet, 1 leak clamp; pole 25 plus 150 feet, 2 leak clamps. Mile 29, pole 16 plus 150 feet, 2 leak clamps; pole 17, 2 leak clamps; plus 15 feet, 2 leak clamps; plus 60 feet, [fol. 1194] 3 leak clamps; plus 125 feet, 1 leak clamp; pole

18 plus 30 feet, 3 leak clamps; plus 60 feet, 1 leak clamp; pole 19, 1 leak clamp. Pole 22, 1 leak clamp; plus 10 feet, 4 leak clamps; plus 35 feet, 2 leak clamps; plus 85 feet, 1 leak clamp; plus 150 feet, 2 leak clamps; Mile 29, pole 23, plus 20 feet, 1 leak clamp; pole 26, plus 150 feet, 1 leak clamp; pole 28, plus 50 feet, 4 leak clamps; plus 75 feet, 1 leak clamp; plus 110 feet, 1 leak clamp; pole 29, 1 leak clamp. Mile 30, pole 1 plus 25 feet, 1 leak clamp; plus 50 feet, 2 leak clamps; plus 150 feet, 2 leak clamps; plus 160 feet, 2 leak clamps; plus 175 feet, 2 leak clamps; pole 2 plus 150 feet, 1 leak clamp; pole 3, 1 leak clamp; pole 4 plus 60 feet, 1 leak clamp; pole 7 plus 125 feet, 1 leak clamp; plus 130 feet, 1 leak clamp; pole 13 plus 100 feet, 3 leak clamps; plus 110 feet, 3 leak clamps; pole 14 plus 50 feet, 1 leak clamps; pole 15, 3 leak clamps; pole 16 plus 75 feet, 1 leak clamp; pole 17 plus 150 feet, 1 leak clamp; pole 18 plus 40 feet, 1 leak clamp; plus 45 feet, 1 leak clamp; plus 50 feet, 2 leak clamps; plus 60 feet, 2 leak clamps. Mile 30, pole 20, plus 50 feet, 1 leak clamp; plus 60 feet, 1 leak clamp; plus 150 feet, 1 leak clamp; pole 21, two leak clamps; plus 150 feet, 1 leak clamp; pole 22 is a leak that I had previously reported.

Q. Mr. Elrod, it was testified in this case by the Company engineer Greene that a portion of that pipe during the year 1932 was taken out, or was reconditioned, as he called it; do you know between what mile posts that pipe was reconditioned?

[fol. 1195] A. Yes, sir. It started 60 feet approximately north of Pole 7, Mile 10, to 85 feet approximately north of pole 26, Mile 14; estimated distance of—I haven't got that figure. That is 4 miles and 19 poles, taking 175 feet between poles—about 4 miles and 3345 feet, approximately.

[fol. 1196] Q. In connection with the reconditioning work that was done on that line, do you know how many lineal feet of pipe were taken out of the line and not put back?

A. No, I don't.

Q. Well, we will get that if you don't know. Now, then, with reference to the condition of that line at the time of the hearing before the Commission in 1932 there was an analysis of depreciation and estimated condition of the pipe in evidence and testified to by Mr. McGary and at this time corroborated by Mr. Greene, the Company's engineer. If you will look at the page referring to the Pescadito-Jen-

nings Texaco asphalt wrapped lines—that is the Pescadito-Jennings transmission line——

A. Yes, sir.

Q. What per cent condition is given at each mile-post along that whole line? Give the mile-post and then the per cent.

A. Mile-post 5, 75 per cent; Mile-post 6, 95 percent; Mile-post 7, 95 per cent; Mile-post 8, 95 percent; Mile-post 9, 94 per cent; Mile-post 10, 94 per cent; Mile-post 11, 80.7 per cent; Mile-post 12, 64.7 per cent; Mile-post 13, 95 per cent; Mile-post 14, 95 per cent; Mile-post 15, 95 per cent; Mile-post 16, 95 per cent; Mile-post 17, 87.1 per cent; Mile-post 18, 82.9 per cent; Mile-post 19, zero; Mile-post 20, 94 per cent; Mile-post 21, 91.4 per cent; Mile-post 22, 94 per cent; Mile-post 23, 94 per cent; Mile-post 24, 94 per cent; Mile-post 25, 94 per cent; Mile-post 26, 94 per cent; Mile-post 27, 94 per cent; Mile-post 28, 94 per cent; Mile-post 29, 95 per [fol. 1197] cent; Mile-post 30, 94 per cent; Mile-post 30, Pole 25, 94 per cent.

Mr. Coates: Are those the only per cent condition figures given in connection with that line in the exhibit from which you are reading?

Mr. Lange: There is an average percent, you can read that if you wish.

A. The total of the percentage is given as 2369.8 and the number of items given is 27, and the division as given is 87.8 per cent as the average condition.

Mr. Coates: What with reference to the protective coating on the pipe?

A. The estimated protective coating is 52.8 per cent average.

Mr. Coates: That is, it was given with the pipe itself?

A. Yes, sir.

Q. Now, with reference to the particular mileposts where the reconditioning occurred, will you give the percentages given in this report at those mile-posts?

A. At Mile-post 11, 80.7 per cent; at Mile-post 12, 64.7 per cent; at Mile-post 13, 95 percent; at Mile-post 14, 95 per cent, and on the upper end, do you want that also?

Q. Yes, sir, wherever reconditioning work occurred this last year.

A. Mile-post 19, zero; Mile-post 20, 94 per cent; Mile-post 21, 91.4 per cent.

Mr. Lange: Will you give us just a minute, Your Honor?

[fol. 1198] The Court: We will take five minutes recess, gentlemen. If you want to walk out of the room, all right.

Recess.

The Court: All right, gentlemen, if you are ready.

Q. Mr. Elrod, in connection with the preparation of the appraisal reflected in plaintiff's exhibit 9, you did not set up a separate item for going value, did you?

A. No, sir.

Q. Why?

A. Because I did not consider that there was any basis for a going value. My judgment in having allowed what I conceived a full structure overhead cost——

Mr. Coates: We object to the statement "allowed". He is not a court or jury or commission.

A. I beg your pardon. I have estimated——

The Court: The word "allowed" is changed to "estimated".

Q. Or you might say made provision for or something.

The Court: Go ahead.

The Witness: Will you read me what I said?

(Thereupon the Reporter read the last preceding answer of the witness, as follows: "Because I did not consider that there was any basis for a going value. My judgment in having allowed what I conceived a full structure overhead cost——")

[fols. 1199-1218] The Court: Now, you are changing that word "allowed" to "estimated" there?

Mr. Lange: Yes, sir.

A. Now, where there had been no evidences of expenditures for going concern values, I have not credited the estimate with going concern value.

Q. You made no separate allowance for that item?

A. Made no separate allowance for it.

Q. I mean no separate provision.

A. I beg your pardon again. No separate provision. In my estimates after having considered that the property was evaluated on the basis of a concern that was operating—

an operating entity and going and having business attached. When the company started off its operations, it had business.

Mr. Lange: I believe that is all, Mr. Elrod, for the present.

Mr. Coates: Are you through with this witness?

Mr. Lange: Yes.

* * * * * * *

[fol. 1219] Q. Mr. Elrod, referring to page B of Plaintiffs' Exhibit 9, and to that item on page B styled Engineering and Supervision, 2½ per cent, $19,593.00,—do I understand it to be your testimony that 2½ per cent of the direct construction costs, or $19,593.00, constitutes and represents your engineering judgment of the amount of costs which would be incurred for Engineering and Supervision if properties similar to these were to be reconstructed to-day?

A. I believe I testified on yesterday that I had not made such an estimate, but that my estimate was made on the basis of these particular properties, or this particular property, constructed as it was constructed; that in 1910 $167,000.00 worth of the property was constructed; and after that time during the operations of the property, up to 1928——

Q. Now, just a minute. You are getting onto a point as to which an objection was sustained yesterday. I believe my question is reasonably clear. If you didn't understand it, I will ask the Reporter to read it to you. Please read the question I asked, Mr. Reporter.

[fol. 1220] (Thereupon the Reporter read the last preceding question, as follows: "Q. Mr. Elrod, referring to page B of Plaintiffs' Exhibit 9, and to that item on page B styled Engineering and Supervision, 2½ per cent, $19,593.00,—do I understand it to be your testimony that 2½ per cent of the direct construction costs, or $19,593.00, constitutes and represents your engineering judgment of the amount of costs which would be incurred for Engineering and Supervision if properties similar to these were to be reconstructed to-day?")

Q. Can you answer that question, Mr. Elrod?

Mr. Bobbitt: Go ahead and answer it.

A. If the properties were blotted out and had to be reconstructed new to-day, starting from 'scratch', so to speak, I believe that the engineering service would cost more.

Q. How much more?

A. I think the fee would probably be on the total properties something like three and one-half per cent.

Mr. Bobbitt: Had you finished your answer to the first question he asked you, Mr. Elrod?

The Witness: Yes, sir.

The Court: Gentlemen, wait just a moment. I have a long distance telephone call that I want to respond to.

Mr. Coates: Yes, sir.

(Recess.)

[fol. 1221] (10:05 A. M.—After Recess)

Q. Now, does that three and a half per cent cover engineering?

A. Engineering and supervision.

Q. What character of supervision?

A. Engineering supervision, which means inspection to see that the work is properly done.

Q. What character of engineering expense and service does it cover?

A. The plans with the rights of way indicated and the line for the pipe line with a map very much the same as this, with details at points of connections, valves, and so on.

Q. Have you ever assembled an engineering crew for the construction of a natural gas property?

A. I have not.

Q. Have you ever studied any cost data showing the engineering costs actually incurred in connection with the construction of a gas transmission and distribution system property such as this?

A. I don't believe I have.

Q. Now, this supervision which you have got here, does that cover any superintendent of construction?

A. No.

Q. It simply covers engineering supervision, does it?

A. Yes, sir.

Q. Now,——

A. Before we get off the question, Mr. Coates, if I may,

[fol. 1222] I had not quite finished my answer to your first question, and if the Reporter will read that to me——

Q. All right, if the same Reporter is here.

Mr. Bobbitt: Can't you remember the question that was asked?

Q. What you stated was, as I recall it, that if these properties were to be reconstructed today you were inclined to think that the cost of engineering would be three and a half per cent.

A. Prior to that time you had asked me another question, and the question I had in mind to answer and was answering was that I could not conceive of these properties being blotted out over night and having to be reconstructed at this time; that the engineering fee indicated here represented my judgment as to the engineering that would be fairly represented by the conditions under which the property was constructed and that no more than this has ever been spent and that it is contrary to my——

Q. Now, wait a minute, Mr. Elrod. Are you testifying as to what has been spent historically and capitalized with respect to this property?

A. Yes, sir.

Q. Have you examined the books of the company?

A. Yes, sir, the records that were furnished me by the Auditor.

Q. You have not examined the records?

A. Not the books, but the reports of my Auditor.

[fol. 1223] Q. You have examined some reports that he has furnished you?

A. Some reports that he has furnished me and entered in this record.

Mr. Coates: We object to this as hearsay.

Mr. Bobbitt: He asked for his judgment and experience.

Mr. Coates: He is now stating hearsay.

Mr. Bobbitt: He is trying to give it to him.

Mr. Coates: It is objected to as hearsay.

The Court: How is it hearsay, Mr. Coates?

Mr. Coates: Statements that he is making, which he in turn got from some working sheets or working papers.

The Court: Isn't it stating an opinion upon what he has heard?

Mr. Bobbitt: Yes, sir.

Mr. Coates: Yes, and that in turn——

The Court: He is entitled to base an opinion upon what he has heard. Maybe he don't know as much as some other fellow knows about it.

Mr. Bobbitt: He is trying to tell it.

The Court: It is based on what he learned from others.

Mr. Coates: Note the exception.

A. My knowledge of the situation from the record and a study of the history of the company indicates to my mind that the sum included, $19,593.00 cost new, is a fair figure for the engineering in this particular instance, and I don't [fol. 1224] believe that it is right to burden his property——

Q. Now, wait a minute.

Mr. Coates: We object to that statement, and particularly the statement that it is a fair figure for this property.

The Court: That is his opinion, Mr. Coates.

Mr. Coates: We object to it because that invades the province of the Court and jury. He is here to give his engineering opinion as to what these costs of engineering would be, not what should be fairly allowed by some Commission, court or jury.

Mr. Bobbitt: He has given his opinion, if the Court please, what he thinks it ought to be. They have one figure. His figure may not agree with that.

The Court: Gentlemen, you didn't object—I was going to sustain you, but you went off on something else. I don't think that is objectionable. Go ahead.

A. I don't think it is right to burden these properties with costs that have never been incurred or that might never be incurred, under conditions which do not exist and may never exist—entirely hypothetical—and my judgment is in this case, and has been in many other cases, that the actual costs as nearly as they are ascertainable, brought down to represent figures of today, are the proper figures to be used, and that is the figure that I have used here.

Mr. Coates: Now we move to strike all that out because [fol. 1225] not responsive to the question asked and because it is based on an erroneous legal conception and prejudicial to the rights of this defendant.

The Court: I would like to ask the wtiness a question before I pass on it. You say you don't think it is right. Do

you mean right as a legal proposition or from an engineering proposition?

A. From an engineering and equitable proposition.

Mr. Coates: Engineering and equitable proposition. We renew our motion.

Mr. Bobbitt: You mean equitable from an engineering standpoint?

A. From an engineering standpoint. I do not believe an engineer has a right to put in figures that he does not conclude are right and proper to put in.

Mr. Fitzhugh: If the Court please, this is all an explanation of how he proceeded in making his appraisal. Everybody recognizes that he is not to decide the case.

The Court: I hope nobody thinks I do not understand what the witness is trying to do. The question is whether his testimony is admissible.

Mr. Lange: If it is predicated on his judgment as an engineer, it seems to me that it certainly is admissible, and he has put it on that basis now, as I understand it.

The Court: Will the Reporter read the witness' answer?

[fol. 1226] (Thereupon the Reporter read as follows: "A. I don't think it is right to burden these properties with costs that have never been incurred or that might never be incurred, under conditions which do not exist and may never exist—entirely hypothetical—and my judgment is in this case, and has been in many other cases, that the actual costs as nearly as they are ascertainable, brought down to represent figures of today, are the proper figures to be used, and that is the figure that I have used here. Mr. Coates: Now, we move to strike all that out because not responsive to the question asked and because it is based on an erroneous legal conception and prejudicial to the rights of this defendant. The Court: I would like to ask the witness a question before I pass on it. You say you don't think it is right. Do you mean right as a legal proposition or from an engineering proposition? A. From an engineering and equitable proposition. Mr. Coates: Engineering and equitable proposition. We renew our motion. Mr. Bobbitt: You mean equitable from an engineering standpoint? A: From an engineering standpoint.

I do not believe an engineer has a right to put in figures that he does not conclude are right and proper to put in.")

Mr. Coates: On the further grounds that it is based on an erroneous legal conception and is an attempt by indirection to get into the record hearsay testimony.

The Court: I overrule the motion to strike.

Mr. Coates: Note the exception.

Q. Now, Mr. Elrod, do you subscribe to the proposition that a reproduction cost appraisal is a matter of engineering estimate to reflect what it would cost to reproduce a similar property if constructed today—that is, similar in all respects to the properties here in question?

A. Perhaps—well, I have not made any such estimate.

[fol. 1227] Q. You haven't made any such estimate?

A. I made an estimate on——

Q. Well, let me ask you——

Mr. Bobbitt: Let him finish his answer.

Mr. Coates: He says he has not made any such estmate.

Q. Does Plaintiffs' Exhibit 9 constitute such an estimate?

Mr. Bobbitt: The witness did not finish his answer, and I think he ought to be permitted to do so. Counsel ought to let him finish that question before he gigs him with another, if the Court please.

The Court: Gentlemen, if you don't think I am a little mean, I think the witness started in before the lawyer finished, and I know you started in, Mr. Bobbitt, before either of them had a chance to say anything. Had you finished your answer?

The Witness: Let him read it.

(Thereupon the Reporter read as follows: "Q. Now, Mr. Elrod, do you subscribe to the proposition that a reproduction cost appraisal is a matter of engineering estimate to reflect what it would cost to reproduce a similar property if constructed today—that is, similar in all respects to the properties here in question? A. Perhaps—well, I have not made any such estimate. Q. You haven't made any such estimate? A. I made an estimate on—— Q. Well let me ask you——")

The Court: Go ahead.

A. The question is an involved one and it is not susceptible of just an answer right offhand.

The Court: Very well. I will ask the lawyer to break it [fol. 1228] up for you.

A. There are a number of concepts of what a reproduction appraisal is, how it is to be made——

The Court: Wait a minute. He asked you what was your conception; that is the question.

Mr. Coates: And I outlined a concept to him and asked him if that was his conception.

Mr. Fitzhugh: If the Court please, if the witness wants to qualify his answer, why can't he do that?

Q. I will repeat the question, Mr. Elrod. Do you subscribe to the proposition that a reproduction cost appraisal constitutes an engineering estimate of what it would cost to reproduce a property similar in all respects to the properties here in issue—that is, the transmission lines and the distribution system—if constructed at the present time?

A. Not exactly. I prepared an estimate on——

Q. Now, I am asking you for your concept.

The Court: He said "Not exactly".

Q. Well, what is your concept?

A. My concept is represented by the fact that I prepared an estimate, not on similar properties but these identical properties as they exist today, without considering that they have been wiped out.

Q. Does Plaintiffs' Exhibit No. 9 represent, in your engineering judgment, what it would cost to reproduce these or similar properties if they were to be rebuilt today?

[fol. 1229] A. I believe I stated that I could not conceive of that condition. My estimate is based on these identical properties—that is, these properties as of December 31, 1933.

Q. Do you mean to say that as an engineer you can not conceive of building a transmission line today such as the transmission line from Carolina-Tex. to Laredo, the one that actually exists?

A. I don't believe that such an one could be actually reproduced in all of its elements, because perhaps some of

the materials that enter into it could not be had—type of materials.

Q. What type of materials?

A. Well, I don't know that there are any such type of materials, but it is possible that there are weights of pipe that have been abandoned since the line was constructed.

Q. Well, now, are you testifying to facts or to possibilities?

A. Possibilities.

Q. Well, is it possible for you as an engineer to conceive of a construction project which would involve the six inch line from the Carolina-Tex. field to Pescadito Junction and then a line composed of eight, ten and twelve from Pescadito Junction to Laredo and composing the same materials and the same weight of pipe as is contained in that line at the present time as reflected by the inventory?

A. If these same weights of material and character could [fol. 1230] be obtained——

Q. Then you can't—well, excuse me; I don't mean to break in on you.

A. Why, one could make an estimate of the cost of constructing such a line, but I have not prepared such an estimate. I prepared an estimate of what this line, in my judgment, cost to construct.

Q. As historically built?

A. As in figures of today—that is, historically built on today's prices.

Q. Now, can you conceive, as an engineer, of constructing in the city of Laredo a property such as the distribution system property that now exists in Laredo?

A. Yes, such a property could be constructed if this property were removed, but such a thing could not happen.

Q. Well, can you conceive of such a thing, Mr. Elrod, as building a gas distribution system in a town or city such as Laredo of the kind and character that exists there now?

A. Yes, that has been done—that is, that system has been built.

Q. Can you conceive of it?

A. Well, I have made no such estimate—that is, I have prepared no estimate to rebuild this line. I have simply appraised the properties—the identical properties that have been found to exist at this time, as of December 31, 1933.

Q. Then that part of Plaintiffs' exhibit 9 relating to [fol. 1231] transmission system properties, as I understand you, does not represent your engineering estimate of what it would cost to build a line similar in all respects to that transmission line if built today?

A. Not exactly. My estimate reflects what it would cost, or rather what the identical properties there cost as of January 31, 1933.

Mr. Bobbitt: December 31.

A. December 31, 1933.

Q. Nor does Plaintiffs' Exhibit 9, in so far as it relates to distribution system properties, represent your engineering estimate of what it would cost to reproduce and build and construct a distribution system similar in all respects to that now existing in Laredo if built today?

A. No; my estimate is only of what the existing properties—the identical properties—are worth as of December 31, 1933.

[fol. 1232] Mr. Coates: Now, we renew our objection at this time for the reason that it is apparent at this point from this witness' testimony that Plaintiff's Exhibit 9 does not represent a reproduction cost appraisal as the term reproduction cost new and reproduction cost new less depreciation is used in connection with appraisals and to constitute one element of fair value.

The Court: The motion is overruled.

Mr. Coates: Note our exception.

Q. Now, Mr. Elrod, as a matter of fact, isn't it your opinion that the cost of engineering and engineering supervision on this job, if these properties were reconstructed today, would be five per cent?

A. It would be rather difficult to say what the costs would be under those circumstances, if these properties were to be reconstructed. Perhaps the engineering would be—well, I just don't know.

Q. You just don't know?

A. No.

Q. Well, it is something that has been done many times in the last decade, has it not—the building of a transmission system into a town and the building of a distribution system?

A. Yes, but the reconstructing of this system is an entirely different thing, a different proposition. What it would cost to build a transmission system and a distribution

system of similar magnitude new, would perhaps cost around 3½ per cent. I have forgotten just exactly what the [fol. 1233] American C. E.——

Q. Well, I am asking you your judgment on it.

A. Well, my judgment is it could be done for that. I would do it for that.

Q. And isn't it a fact that you have set up two and one-half percent of direct construction costs in Plaintiff's Exhibit 9 because someone has told you that as this property was constructed historically, over a period of 23 years, a part of the engineering work was done by engineers carried on the operating payroll?

A. Yes.

Q. That is a fact. And isn't it your judgment (and I don't think you gave a direct answer to this question) that if similar properties to these were reconstructed today the cost of engineering and engineering supervision would be five percent?

Mr. Bobbitt: Are you interrogating from a transcript of the testimony had before the commission, Mr. Coates?

Mr. Coates: No, but I am just before doing it.

Mr. Fitzhugh: We object to that question, may it please the court——

The Court: Overrule the objection.

Mr. Fitzhugh: He is asking a question, may it please the Court, for the construction of a similar plant. Now does he want a substitute plant built here?

Mr. Coates: No, similar in all respects to this, if built today.

[fol. 1234] Mr. Fitzhugh: Why not build the identical plant, then?

Mr. Coates: It is similar in all respects.

The Court: The objection is overruled.

Mr. Bobbitt: Read that question to the witness.

(Whereupon the following question was read to the witness: "Isn't it your judgment that if similar properties to these were reconstructed today the cost of engineering and engineering supervision would be five percent?")

A. The design and supervision of construction of work, transmission lines and distribution system of the magnitude of these lines, it probably would be.

Q. Probably would be.

A. I did not arrive at the——

Q. Now, I don't want to cut you off from any explanation, but I believe your answer is responsive, and I don't want you to volunteer unless it is necessary.

Mr. Bobbitt: Is it necessary in your opinion to explain your answer, Mr. Elrod, to make it clear to the Court?

Mr. Coates: Well, we have this witness on cross examination.

Mr. Bobbitt: He says he doesn't want to cut him off, and then he does it time and again.

Mr. Coates: We object to the remark of counsel, because it is prejudicial and ask the court to instruct the jury.

The Court: The witness is on cross examination and on recross or on redirect examination, you may get all the explanation you want, gentlemen. Go ahead.

[fol. 1235] Q. Have you ever made an appraisal of a natural gas property other than the property there at Laredo?

A. Yes.

Q. How many?

A. One, I believe. The Wichita Falls property.

Q. How much did you—was that a natural gas distribution system in the city of Wichita Falls?

A. Yes.

Q. About how large was Wichita Falls at that time?

A. I do not recall.

Q. And in that appraisal, wasn't it your engineering judgment that an amount of five percent was a fair or a proper amount to represent the cost of engineering and engineering supervision?

A. That work was done in 1923, as I recall, and my recollection of it is quite hazy. I believe you have a copy of my report on that, and whatever I said in that report I subscribe to.

Q. I've got one, but I forgot to bring it with me, but I will get it here.

A. I would like to qualify that statement—that I have changed my mind several times since I made that report, about various and sundry matters and policies.

Q. As a matter of fact, Mr. Elrod, isn't the ten percent which you show here on page B of Plaintiffs Exhibit 9 the lowest over-all aggregate amount for undistributed construction costs which you have ever included in any appraisal of gas properties, other than this one?

[fol. 1236] Mr. Bobbitt If you recall.

A. That I recall—it is as low as any of them.

Q. Well, isn't it the lowest?

A. I don't know that it is.

Q. Now, Mr. Elrod, in the course of a construction job such as reconstructing these properties, when would the cost of the engineering be incurred?

A. It would be incurred prior to the construction of the properties.

Q. Prior to the construction of the properties. And when would the preliminary and organization expense be incurred?

A. Prior to the construction of the properties.

Q. And what, with respect to the administrative and legal expense?

A. The same thing.

Q. And in other words, the money would have to be provided and paid out for those costs, prior to the construction of the work. Now, have you included herein in your estimate of interest during construction, any interest during construction on the cost of engineering and supervision, preliminary and organization expense, or administration and legal expense?

A. No, sir.

Q. Those are an inevitable and concommitant part of the costs of construction, are they not?

A. Yes.

Q. And you pay out money for them in the same way as you pay out money for pipe and meters, do you not?

A. Yes.

[fol. 1237] And you have computed your interest during construction on materials and costs of installation—that is, direct costs of installation, haven't you?

A. Yes.

Q. But you have not computed any interest during construction on the undistributed construction costs?

A. No.

Q. Now, Mr. Elrod, isn't it a fact that what you did here was to simply take ten percent of the direct construction costs and divide up that ten percent arbitrarily between the five items which you show for undistributed construction costs?

A. I believe I so testified in the original case, and that is a fact.

Q. That is a fact now, is it?

A. Yes.

Q. And have you made any analysis or breakdown of the operations and functions causing costs which would enter into each classification of undistributed costs?

A. No.

Q. And as I understand your testimony, the amount of these undistributed costs is not based on any actual construction experience that you have had, in connection with natural gas properties?

A. Not in connection with natural gas properties. I have had experience——

Q. Nor is it——

[fol. 1238] Mr. Bobbitt: What was that you started to say? Let the witness finish.

A. I have had considerable experience in the organization and construction of other projects of similar magnitude or greater.

Q. But not on natural gas properties?

A. No.

Q. Is it based on any analysis of undistributed construction costs actually incurred in connection with the construction of natural gas properties?

A. No. I might say that it is based upon my judgment as an engineer as to what these costs would be in similar cases.

Q. Now, the transmission line equipment constitutes ninety per cent or better of the entire transmission system properties, does it not—that is, the pipe lines and the fittings?

A. I have not arrived at that percentage. If that is true, then it is.

Q. Can you look at Plaintiff's Exhibit 9, and state whether that is true or not—that is, of the direct costs.

Mr. Bobbitt: Do you want him to figure that percentage?

Q. No, I want him to satisfy himself that it is ninety per cent or better. I don't want him to get down to four decimal places.

A. I might say that it is that, practically; that is, the direct structural costs, including land, leases and rights of way, materials and supplies.

Q. If you will figure it within five percent, that will be satisfactory.

[fol. 1239] It is around ninety percent.

Q. Now, in the same way in connection with the distribution system properties, as reflected by the distribution system section of Plaintiff's Exhibit 9, the direct costs new less depreciation are $490,488.00, are they not?

A. Yes.

Q. And of that amount, the costs of distribution line equipment and services and meters constitute some $480,000.00 or approximately ninety percent of that item, do they not?

A. Yes.

Q. What over-all weighted percent condition do you give in your appraisal to the transmission system property? Is it 73 percent, Mr. Elrod?

A. I do not believe I have reduced that to an average over-all percent.

Q. Well, you can do so, can't you, Mr. Elrod?

A. Yes.

Q. And have you gotten an average figure on the percent condition given by you to the distribution system property?

A. No, I have not.

Q. Mr. Elrod, you made an appraisal of these same properties a year or more ago, did you not?

A. I did.

Q. And have you made an inspection of the distribution system properties since that time?

A. Visible properties, yes.

Q. Of the distribution system?

[fol. 1240] A. Yes.

Q. Have you made an inspection of the mains and services?

A. No.

Q. And do you show in Plaintiff's Exhibit 9 the distribution system properties to be in the same percent condition as you showed them a year ago?

A. No.

Q. What, with respect to the mains and services, is the difference between what you found a year ago and what you find now?

A. As a whole, I do not believe I have reduced that to percentages.

Q. I am referring now to the mains and services and not the remaining ten percent of the property. As a matter of fact,

Mr. Elrod, haven't you simply reduced the percent condition of the mains under paving three percent, and the percent condition of the mains not under paving by five percent?

A. I have not reduced those to percentages, but I will do so.

Q. Are you unable to state whether or not that is a fact—that you simply reduced the mains under paving three percent and the mains not under paving five percent?

A. I do not know that that is absolutely correct.

Q. And what percentage reduction, to show the percent condition as at the present date, have you made in regard to the transmission lines?

A. I have not reduced that to over-all percentages.

Q. I am not asking you for the entire property but I am asking you simply for the transmission lines themselves.

[fol. 1241] A. I beg your pardon for taking so long, but this book was taken to pieces and put back, and I do not seem to find it by the index. That is correct.

Q. That is correct. Now, Mr. Elrod, in the process of making a determination of percent condition of these properties, isn't one thing that you have done is to attempt to ascertain the date at which a particular line—whether transmission or distribution—was installed.

A. Yes.

Q. Haven't you then computed the time from the date the line was installed at that particular location, down to the present time?

A. Yes.

Q. And then what has been your next process in that computation?

A. To inspect the pipe.

Q. I am talking about the computation you made in the use of the date installed and the time expired since the pipe was installed at that location.

A. I do not quite understand your question. My process in arriving at the percent condition of the pipe involved both the age and life of the pipe and the actual inspection.

Q. Now, I am talking about how you actually made your age-life computation, after ascertaining or attempting to ascertain the time the pipe was installed, and by simple mathematical calculation figured the time from the time it was installed until the present. And what did you do then?

[fol. 1242] A. If the pipe had been in ten years, and the condition of the pipe would indicate that it had a life of 33⅓

years, we would give it three percent deduction for the ten years.

Q. You would then deduct 33⅓ percent?

A. We would deduct 30 percent for ten years.

Q. 30 percent, yes.

A. But in some instances, we did not know the age of the property and had to assume the age from its condition.

Q. Now, Mr. Elrod, turn to page 40 of your transmission system section and refer there to the eight inch pipe weighing 28 pounds per foot, and leaving off the fractions, in the Pescadito Junction to the Aguilares line. Under that item, you state installed 1923, do you not?

A. Yes.

Q. And then after that you state ten years, at three percent depreciation, do you not?

A. Yes. I corrected that yesterday to eleven years.

Q. Where did that ten years at three percent come from. I mean, how did that happen to get into this appraisal?

A. You mean the word, three years?

Q. At three percent.

A. At three percent. Well, it was in our last appraisal.

Q. Which was about a year ago?

A. Yes.

Q. And your correction is now to make that eleven years, at three percent?

[fol. 1243] A. Yes.

Q. And so in 1932, you simply took ten years at three percent and got a 70 percent condition, did you?

A. Yes.

Q. And now, a year later, you have taken eleven years at three percent, and gotten 67 percent condition?

A. Yes.

The Court: Gentlemen, we will take a few minutes recess.

(Whereupon the court was recessed at 10:55 A. M. until 11:05 A. M.)

[fol. 1244] (After Recess)

The Court: If you are ready, gentlemen, let's go. Mr. Elrod, come back, please.

Q. In other words, as appears from page 40 of the Transmission Section of Plaintiff's Exhibit 9, you computed this per cent condition at three per cent a year from the date

you say the line—a line was installed, down to the present date?

A. Yes, sir.

Q. At how many points on that particular line did you make inspections?

A. I made a number of inspections, and I have no record of how many I made. I made perhaps——

Q. I am talking about this particular line we are now referring to, the eight-inch Pescadito Junction to Aguilares, which is a dresser coupled line, asphalt and felt.

A. Yes. I say I don't know how many inspections I made; I have no record of them. I made those inspections once with Mr. Neff and once with Mr. Heins, and again——

Q. Did you inspect that line at all?

A. Yes, sir.

Q. And do you know at how many points?

A. No, I said I didn't know at how many points.

[fol. 1245] Q. Can you approximate it?

A. We made all-told——

Q. I am asking you about this line now, Mr. Elrod.

A. Well, as I say, I can't tell you. My assistants made inspections that I have no record of with me.

Q. Well, now, what did you make?

A. I made, as I recall, about fifty inspections on the line between Carolina-Tex Field and Laredo.

Q. Now, how many of those fifty inspections between Carolina-Tex Field and Laredo were made at test holes which were specially dug by you or under your supervision?

A. Well, I can't tell you—about fifty, I think, were made by me.

Q. But my question is, Mr. Elrod,—you understand what I mean by test holes specially dug?

A. Yes sir; yes, sir.

Q. My question is, how many were made at test holes which were specially dug?

A. I can't testify on that.

Q. You can't testify?

A. I don't recall just how many test holes were made.

Q. Do you recall whether there were any test holes dug on the section of line from Pescadito Junction to Aguilares?

A. Yes, there were.

Q. But you can't say how many?

[fol. 1246] A. No.

Q. Can you approximate it?

A. No, I don't believe I can.

Q. Did you make inspections at those points where test holes were specially dug?

A. Yes, sir.

Q. What, in your judgment, is the best way of getting the fair over-all average condition of a transmission system line that is buried—that is, what is the best way of getting an average condition by inspection?

A. Solely by inspection, there is no best way according to my judgment.

Q. Isn't the better way to first ascertain points equally spaced at intervals along the line and then dig a test hole and make inspections at those particular points.

A. I think not. I think the better way is to go over the terrain and find, if possible, the hot spots, and test the lines particularly in those hot spots, where they are expected to be in worse condition than they would be in other places.

Q. In other words, go over the line and look for the places where you can expect the greater amount of corrosion?

A. Yes, sir.

Q. And do you likewise think that another good way of getting a fair over-all average per cent condition of the property is to inspect the pipe at those points where it [fol. 1247] has been opened for repair?

A. Yes, I think that is a good way of finding out the condition. Any place that you can inspect a pipe where it is, either good or bad, is a desirable place to find out. The more inspections you make the more nearly you come to an accurate determination, if such a thing is possible by inspection.

Q. Then, do you think that inspecting the line at hot spots where a greater corrosion is to be anticipated, and inspecting it at points where it has been opened for repair is a better method of getting a fair over-all average per cent condition of the property than digging test holes at evenly spaced points along the line?

A. I certainly do.

Q. And that was the method that you have outlined—that is, inspecting the pipe where it has been repaired and where the hot spots were—that was the method, generally speaking, followed in inspecting this Carolina-Tex-Laredo line?

A. No, we dug special test holes——

Q. How many?

A. —from point to point.

Q. How many?

A. I testified that I didn't know. I presume there were fifty dug at my direction along the line between the Carolina-Tex Field and Laredo City Gate.

[fol. 1248] Q. And were those dug at regular intervals?

A. No, they were dug at random.

Q. And in hot spots, principally?

A. No, just at random, without any reference to the hot spots.

Q. And did you inspect those fifty test holes?

A. Pardon me.

Q. I say did you inspect the pipe at each of those fifty test holes.

A. Yes, sir, I inspected the pipe at every test hole that was dug, whether I had it dug or not.

Q. And when were those test holes dug?

A. Well——

Q. I mean, what year?

A. They were dug in 1932.

Q. All of them prior to the Commission hearing?

A. Yes, sir.

Q. Have any special test holes been dug along that line and inspected by you since the Commission hearing?

A. No, sir.

Q. Now, in what instances in this Pescadito Junction Aguilares line did the result of your inspection cause you to change from your straight line age life method of three per cent a year?

The Witness: Will you read the question, please, Mr. Reporter?

[fol. 1249] (Thereupon the Reporter read the last preceding question, as follows: "Q. Now, in what instances in this Pescadito Junction-Aguilares line did the result of your inspection cause you to change from your straight line age life method of three per cent a year?")

A. I didn't know that I did change.

Q. Did you change in any respect from the three per cent a year, as the result of inspection?

A. I don't quite get the drift of your question.

Mr. Coates: Read it, Mr. Reporter.

(Thereupon the Reporter read the last preceding question, as follows: "Q. Did you change in any respect from the three per cent a year, as the result of inspection?")

Mr. Fitzhugh: May I ask a question, please sir?

The Court: Yes, sir.

Mr. Fitzhugh: Mr. Elrod, is that the correct designation for the method that you used for determining depreciation, straight line age life method?

A. I have used a combination of age and life and inspection.

Mr. Fitzhugh: I object to the question, then, because it doesn't use the same method that the witness has used.

Mr. Coates: He says that is one method that he has used, and he has combined it with inspection, and I am [fol. 1250] trying to find out how much inspection has changed his age life figure.

The Court: Pardon me, Mr. Fitzhugh, really and honestly, I don't understand your objection. I don't know how to pass on it.

Mr. Fitzhugh: The question states, in substance, that the witness is using a straight line age life method, and——

The Court: Well, read the question.

(Thereupon the Reporter read the testimony under discussion, as follows: "Q. Now, in what instances in this Pescadito Junction-Aguilares line did the result of your inspection cause you to change from your straight line age life method of three per cent a year? A. I didn't know that I did change. Q. Did you change in any respect from the three per cent a year, as the result of inspection? A. I don't quite get the drift of your question.")

Mr. Fitzhugh: The witness says he doesn't use a straight line age life method, but a combination of that and——

The Court: The objection is overruled. I think the question is answered.

Q. Mr. Elrod, I will ask you if at the time you testified before the Commission you were not asked the following question, and did not give the following answer:

[fol. 1251] "Question: Wouldn't you get the most representative inspection if you took a pipe line map before you went out to make your inspection, or to dig your holes for making inspections, and spaced that off at equidistant distances and then dug the holes in those places?"

To which you answered:

"Yes, that would be a very good way to do it."

Mr. Lange: What page is that on?

Mr. Coates: Page 369.

Mr. Bobbitt: Are you reading from the transcript of the testimony before the Commission?

Mr. Coates: And his testimony under oath, Mr. Bobbitt.

Mr. Bobbitt: I understand that. He was under oath, just like he is here; but I just asked you if you were reading from the transcript of the testimony before the Commission.

The Court: He answered yes.

Q. (Reading:) "Question. And wouldn't that give you the most representative observation of the pipe on that line? Answer. I would not say it would be most representative, but it would give an equally representative idea; I [fol. 1252] should say." Were you asked those questions and did you give those answers, under oath?

A. I did.

Q. What has caused you to change your opinion since the date you testified under oath before the Commission, Mr. Elrod?

A. The inspection of the Pescadito-Jennings line, which was inspected by Mr. McGary in that manner—that is, he laid it off for inspection at mile-posts, and his inspection has indicated to my mind that that is a very poor way of arriving at the actual condition of a pipe line.

Q. And you now think that the best way is to find the spots where the pipe corrodes the most, and likewise the places where the pipe is being repaired?

A. I think the best way is to inspect it at every point that is suspicioned of being depreciated, and at every other point that it is possible to inspect it, each inspection adding to the percentage of correctness of the inspections.

Q. Now, having ascertained——

Mr. Bobbitt: Pardon me, Mr. Coates. May I ask this question: Mr. McGary, whom you testified about there, is an engineer for the Gas Company, is he not?

[fol. 1253] A. Yes, sir.

Q. On your inspections at hot spots, you note the condition of the line at that point, do you not—at each hot spot?

A. Yes, sir.

Q. And you note the condition of the line at each point where it is being repaired, do you not?

A. Yes, sir.

Q. And then you take the condition noted at those points and apply that information in determining the condition of the line, do you not?

A. After making the inspections at points where the pipe is perhaps in better condition; in other words, an honest attempt is made to arrive at what the exact condition of the pipe is.

Q. Well, now, how do you find those places where the pipe is in better condition?

A. Well, there are a number of indications of the condition of the pipe,—from the character of soil, where soil is drained well the pipe is likely to be better than where the soil isn't drained so well.

Q. Now, do you give an inspection made at all hot spots and all repair points equal weight with the inspections made in the high points?

[fol. 1254] A. I don't believe that we have an understanding of each other in this matter of inspection. The inspections that I have made have been made at random and with the idea of tying into or with the age and life method of arriving at depreciation in trying to form a judgment as to the condition of the pipe.

[fol. 1255] Q. And can you point to any particular instance in Plaintiffs' Exhibit 9 where the result of your inspection has caused you to change from your application of your age life computation?

A. I don't know that I can, offhand.

Q. You are thoroughly familiar with this exhibit, having made it, are you not?

A. Yes, sir.

Q. But at this time you are unable to point to any place relating to transmission lines where your inspection has changed the age life computation?

A. No.

Q. I say you are unable to do it.

A. I am unable to do that at this time.

Q. Now, from what source did you ascertain this estimated age life of thirty-three years which you apply here?

A. The determinations were made in conference with Mr. Neff, the engineer with whom I was engaged by the City, prior to the Commission hearing in October, 1932, and the City Engineer, Mr. Heins, I think, on the inspections and data covering the time the pipe was laid.

Q. Well, now, is that figure—did you derive it or did Mr. Neff and Mr. Heins derive it?

A. Well, it was derived jointly, I think—that is, it represented our judgment.

Q. It represents your judgment as well as the judgment [fols. 1256-1258] of those two men?

A. I relied upon their judgment, to mould my judgment.

Q. Then, it represents your judgment as moulded by their judgment, does it?

A. Aided by my inspection and examination of the pipe and the conditions that surrounded it, with a number of soil tests.

Q. Then you didn't refer to any handbook or anything of that sort—didn't take this age life table from any handbook?

A. No.

Q. But developed it yourself? Now, does that thirty-three years represent your judgment as to the average span of years from the time a joint of transmission line is installed until the time it is retired from service?

A. I think so, with that particular type of protection and soil.

* * * * * * *

[fol. 1259] ALBERT MARTIN, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name?

A. Albert Martin.

Q. Where do you live, Mr. Martin?

A. In Laredo.

Q. How long haye you lived in Laredo?

A. I have lived in Laredo all my life—forty-four years, except two years spent in the United States Army, one of which I spent in France.

Q. Have you lived continuously in Laredo, with that exception?

A. With that exception, yes, sir.

Q. All your life. What position do you hold—what official position in the City of Laredo?

A. Mayor.

Q. You are mayor of the town?

A. Mayor of the city, yes, sir.

Q. How long have you been mayor of the City of Laredo?

A. Eight years.

Q. Eight years. Did you serve in any other official capacity with the city prior to the time you became mayor?

A. Yes, sir.

Q. What was it?

[fol. 1260] A. Alderman.

Q. How long did you serve as alderman?

A. Six years.

Q. Six years. That runs back to about 1920?

A. 1920, yes, sir.

Q. Mayor Martin, are you familiar with the industries in and adjoining the City of Laredo which use gas for fuel or industrial purposes?

A. Yes, sir.

Q. Are you familiar with the price charged for gas for industrial purposes to such industries?

A. Yes, sir.

Q. What is that price?

A. Rwenty and twenty-five cents.

Q. Are you familiar, Mayor Martin, with the price of gas transported by United Gas Public Service Company for industrial purposes through the City of Laredo and delivered across the river to the City of Nuevo Laredo?

A. Yes, sir.

Q. Are you familiar with the industries in Nuevo Laredo burning gas for industrial purposes?

A. Yes, sir.

Q. What are some of them?

A. Two ice plants and a soap factory.

[fol. 1261] Q. Do you know the price charged by the United Gas Public Service Company for that gas so delivered to Nuevo Laredo?

A. Yes.

Mr. Coates: Now, just a minute. Mayor Martin, do you know whether United Gas Public Service Company owns—or owns and operates the gas company which serves gas in the city of Nuevo Laredo?

A. I don't know whether they own it or not.

Q. Do you know the name of that company?

A. It's the Compania De Gas, S. A. I believe.

Q. What does that mean in the United States?

A. Gas Company, Secret Society.

Q. That is a corporation, is it not?

A. Yes.

Mr. Bobbitt: Are you through with your objection, Mr. Coates?

Mr. Coates: I have not made an objection yet, but we now object on the ground that no proper predicate has been laid for this question to make it material upon any issue in this case by showing like and comparable conditions with respect to the volumes of gas delivered and the volumes of gas taken, the minimum amounts agreed to be taken, the load factor requirements and may other matters. And we object further to any testimony with respect to the price at which the company distributing gas in New Laredo sells gas.

The Court: I will sustain that objection.

[fol. 1262] Q. Do you know, Mayor Martin, where the United Gas Company meters the gas that is delivered by it out of the city of Laredo to the City of Nuevo Laredo, Mexico?

A. Right on the bridge—the international bridge on Convent Avenue, in the city of Laredo.

Q. Do you know the price the United Gas Company sells gas thru that mater to the distributing company in Nuevo Laredo?

A. For domestic purposes, I do not. I do know, for industrial purposes.

Q. What is it for industrial purposes.

A. 14½ cents, and that includes a small amount of duty paid for that gas to the Mexican government.

Q. If I understand you, there is a duty on gas which is imported into Mexico?

A. There has been for the past three years, but prior to that there was no duty.

Q. Is that the prices the industries pay in the city of Nuevo Laredo, or is that the price at the city gate that the——

Mr. Coates: Now we renew our objection to that question.

The Court: What was the question. (Question is read.)

Q. What I am getting at is this: I understood you to say that the price was 14½ cents——

The Court: That is paid by the distributing company.

Mr. Coates: Yes, I was confused about that. We have no objection whatever to the price at which the United Gas sells gas to the New Laredo Gas Company at the bridge, but [fol. 1263] I understood your question goes further, and was going into the price at which the Nuevo Laredo company sells to industries.

Mr. Bobbitt: We can clear that up by stipulating that is the price they sell gas in the city of Laredo for delivery to Nuevo Laredo, at 12¼ cents. I believe that is the testimony Mr. Stein gave.

Mr. Coates: I don't know whether it is or not. The contract will show the price at which gas is sold by the United to Nuevo Laredo Gas Company, and I will be glad to stipulate it as soon as I can look at the contract.

A. To my knowledge, the price that they pay is 14 cents less 15 per cent.

Q. That is the industries?

A. No, that is the Nuevo Laredo Gas Company pays the United 14 cents, less 15 per cent.

The Court: I understood you tc say a minute ago, 14½?

A. That is what the industries pay in Nuevo Laredo.

The Court: Then that is stricken. Fourteen cents now is the price that the gas company pays to the United at your city gate as it goes into Nuevo Laredo, less 15 per cent?

A. That is correct.

Q. Now Mayor Martin, are you familiar with the Haussman Pac-ing Company plant in the City of Laredo?

A. Yes.

Q. How long has that concern been existing there, if you know?

A. Approximately ten or twelve years.

[fol. 1264] Q. And that is a packing company?

A. Yes.

Q. Are they in continuous operation at this time?

A. Yes.

Q. And carrying on their business?

A. Yes.

Q. Do you know of your own knowledge their situation in respect to the use of natural gas for fuel purposes as compared or as in connection with other fuels?

A. Yes.

Q. State what that is.

A. Their president, Mr. Louis Haussman repeatedly complained to me that the price of gas was exhorbitant——

Mr. Coates: We are sorry, Mr. Mayor, but we are going to be compelled to object to this, as hearsay.

The Court: There is no question of it; it is hearsay.

Mr. Coates: We don't mean, Mayor, that Mr. Haussman——

The Court: I don't believe Mr. Martin understood that question, anyway. Will you read the question? (The question is repeated to the witness.)

A. They changed from natural gas to fuel oil.

Q. Why?

A. Because natural gas was found to be high and exhorbitant in comparison to fuel oil. It was more economical to burn fuel oil than natural gas, at the price they were paying for natural gas.

[fols. 1265-1271] Q. Do you know of your own knowledge whether or not they are now burning fuel oil?

A. Yes, they are.

Q. Do you know of your own knowledge whether they desire natural gas as a fuel?

A. They do.

* * * * * * *

[fol. 1272] By Mr. Bobbitt:

Q. Mayor Martin, do you know whether or not on what has been designated the North Laredo Line and the South Laredo Line of the United Gas Public Service Company

there are irrigation and pumping plants used by farmers in the irrigation of their farms there?

A. Yes, sir.

Q. Do you know what fuel they use for the running of those irrigation pumps and plants?

A. Natural gas and electric power.

Q. Do you know whether or not there has been a reduced use of natural gas in the last two or three years by those concerns?

A. Yes, sir.

Q. Why have they reduced or ceased to use natural gas?

Mr. Coates: We are compelled to object to that, because it naturally calls for a conclusion, and it would be hearsay.

The Court: Of course, if it calls for hearsay or a conclusion of the witness, it would—inadmissible and the objection would be sustained; but Mayor Martin may have some of those plants himself, and then——

A. Yes, sir; I operated an irrigation farm in North Laredo in 1923, 1924, 1925, and 1926, and we put in an electric motor because we found it more economical than a Bessemer gas engine.

Q. Have you operated a farm there in the last two or three years?

[fol. 1273] A. No, sir.

Q. Do you know, of your own knowledge, men who are operating and have been operating those pumping plants on those farms during the last two or three years?

A. Yes, sir.

Q. Do you know of your own knowledge—I believe you testified they had ceased or reduced the use of gas; do you know of your own knowledge whey they reduced their consumption of gas for industrial purposes?

Mr. Coates: We renew our objection.

The Court: Yes, sir; the objection is sustained, except where he knows. I want no answer to a question that would call for a conclusion or one based on hearsay. I will allow Mr. Martin to answer as to what he did himself out there.

Q. How many, in number approximately, of farmers are now using natural gas in those two areas?

A. Approximately thirty.

Q. Do you know Mr. J. O. Walker?

A. Yes, sir.

Q. Do you know Mr. Willie McKendrick?

A. Yes, sir.

Q. On another matter it has been testified in this case by Mr. Stein, the District Manager of the United Gas Public Service Company at Laredo, that reducing the price of gas from 75 cents per thousand cubic feet to 55 cents per thou- [fol. 1274] sand cubic feet, as provided in the Commission's order, would not bring to the Company any increased number of customers, or any increased volume of gas sales to existing customers in the City of Laredo. You live in the City of Laredo, and are a consumer of gas, are you not?

A. Yes, sir.

Q. Would the reduction of the price cause you to use any more gas than you use at the 75-cent rate?

A. Certainly it would.

Q. Are you acqainted generally with the users of gas for residential purposes in your city?

A. I am.

Q. I believe the population of the city according to the last census is approximately 35,000; is that correct?

A. Yes, sir.

Q. That is about right?

A. Yes, sir.

Q. The testimony in this record shows that there are approximately five thousand gas users in the City of Laredo. Being acquainted with the situation in the City, as you are acquainted with it, would there, in your opinion, be an increased number of gas consumers—I mean, residential consumers in number, and an increased amount of gas used by existing customers, if the price is 55 cents, instead of 75 cents?

Mr. Coates: Just a minute. We object to that because [fol. 1275] it calls for a conclusion of the witness, and no proper predicate has been laid for the giving of a conclusion such as this by this witness.

The Court: The objection is overruled. This witness I think is qualified and acquainted with the situation.

A. Yes.

Mr. Coates: We except.

Q. What is your answer?

A. They would gain more customers, and the present customers would burn more gas.

Mr. Coates: Our objection goes to all of this.

Q. In your opinion there would be a substantial increase in the number of users, and a substantial increase in the volume used by existing customers.

Mr. Coates: We object to that for all of the reasons previously given, and for the further reason that the question is too indefinite.

The Court: I suspect that it is too indefinite.

Q. How much increase do you think there would be?

A. There would be an increase of approximately fifteen hundred meters.

Q. In your opinion there would be an increase of approximately fifteen hundred meters?

A. Yes, sir.

Q. What do you base that opinion on?

[fol. 1276] A. I think I am pretty familiar with the conditions existing in Laredo. I further know that there is a fleet of approximately one hundred trucks operating out of Laredo, going as far north as my ranch. I own a ranch fifty-five miles north of Laredo on the paved highway, and ten miles east of a dirt road, and there is approximately fifteen trucks going out there—have been going out there for the last six months, two men to the truck, to haul wood, for which they pay me seventy-five cents a load; they go out 66 miles and return 66 miles, cut that wood, and put it on the truck and bring it back to town, and they have all told me that they make a nice profit on that load of wood.

Mr. Coates: We move to strike the answer for all the reasons previously given in our objections; and further, because the cost of competitive fuels is immaterial and has no bearing on any issue in this case.

The Court: Except for the basis of his opinion, there would be an increased use of gas if the price was less.

Mr. Coates: And is not a proper matter for testimony as to the reasonableness of the order prescribed by the Railroad Commission.

The Court: I am admitting it only as a basis for his opinion. The objection is overruled.

Mr. Coates: Note our exception.

[fol. 1277] Q. What did you state they had told you?

A. That they had made a profit.

Q. Those hundred trucks that haul wood in there, they distribute that wood to people desiring to have fuel in their homes in Laredo, don't they?

A. Yes, sir.

Q. Would these users of wood, in your opinion, use natural gas if they could get it at the 55-cent rate, rather than the 75-cent rate?

A. In my opinion, they would.

Q. What is your opinion based on?

Mr. Coates: We object to all this line of testimony.

The Court: He has stated what it is based on, I think.

Q. Do you have under your direction or jurisdiction as trustee lands and properties situated in the Carolina-Texas section of Webb County that are leased for oil and gas development purposes?

A. Yes, sir.

Q. How much land is under your jurisdiction?

A. Forty-one thousand acres of land.

Q. Is that the Servando-Benavides Estate properties?

A. Yes, sir.

Q. Approximately how many gas wells on that property are producing gas at this time?

[fol. 1278] A. Nineteen.

Q. How long have you been trustee of that estate and in charge of its operations?

A. Since 1928, in March.

Q. Since March, 1928?

A. Yes, sir.

Q. Do you sell gas to the United Gas Public Service Company?

A. Yes, sir.

Q. What price do you get for it?

A. Four cents.

Q. Do you have gas wells there from which no gas is being taken, there being no market for it?

A. We have two.

Q. You have two?

A. There is no pipe line extended to those two wells.

Q. Are you familiar with the other gas producers in that area in a general way?

A. Yes, sir.

Q. Do you know approximately how many gas wells are producing and delivering gas in that Carolina-Tex. area at this time?

A. I couldn't answer that question; I don't know.

Q. Now, Mayor Martin, testimony in this record by the witnesses for the Gas Company shows that the primary reason, as I gathered it from that testimony, for the non-use of gas by a great many people in the City of Laredo was the fact [fols. 1279-1281] that the installation for the use of gas was the trouble, and not the price of gas. Are you familiar with the character of installation that many of the gas users, or would-be users of gas, install for the use of gas in their homes?

A. I think I am.

Q. Approximately what would be the expense?

A. Six to eight dollars.

Q. And what would that include?

A. That would include most of the area—a large uneven area there.

Q. I mean what material would that include?

A. It would include an extension from the curb to the property line and a connection for stove and light.

Q. Do you know whether, of your own knowledge, there are a large number of users of gas there with just such an installation as you testify to—a very simple and inexpensive installation?

A. Yes, sir.

Q. There are a great many laboring people living in the City of Laredo?

A. Yes, sir.

Q. People of small means?

A. Yes, sir. We have three thousand registered with the Relief Board.

Q. People that rent their homes?

A. Yes, sir.

* * * * * * * *

[fol. 1282] J. O. WALKER, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name?
A. J. O. Walker.
Q. Speak a little louder, Mr. Walker, so they all can hear you.
A. J. O. Walker.
Q. Where do you live, Mr. Walker?
A. Laredo, Texas.
Q. How long have you lived there?
A. Since 1910.
Q. Since 1910?
A. Yes, sir.
Q. What business are you engaged in, Mr. Walker?
A. In the farming and creamery business.
Q. How many farms do you operate there?
A. I am operating seven—seven farms.
Q. Do you own those farms?
A. No, sir, not all of them.
Q. Do you live in the City of Laredo?
A. No, sir, I live just outside of the City, in the County.
Q. And the creamery you state you operate is located in the city?
[fol. 1283] A. Within the city, yes.
The Court: Did you say in the city, or adjacent to the city?
A. I live adjacent to the city, but the creamery is in the city.
Q. Are some of the farms in the city limits?
A. No—Yes, there is—there is part of the land inside the city.
Q. Mr. Walker, do you have irrigation pumping plants with which you irrigate your farming properties?
A. Yes, sir.
Q. What fuel do you use for—do you use gas for fuel in operating those pumping plants?
A. Yes, sir.
Q. How long have you been using gas for that purpose?
A. Since 1913.
Q. Since 1913?
A. Yes, sir.

Q. What price do you pay, Mr. Walker, for the use of gas for fuel purposes at your pumping plants?

A. Under the boilers, I am paying twenty-five cents a thousand cubic feet, less five cents if it be paid by a certain date, leaving it twenty cents.

Q. What do you pay for gas used for other purposes—you say boiler purposes?

[fol. 1284] A. Yes, sir.

Q. Do you use gas for any other purpose?

A. That is the only purpose I use gas for now, except for the residence.

Q. What price do you pay at the residence?

A. I believe we have a dollar and a half minimum. The rate has been raised on the consumers outside of the city limits in the last year or two. I think we have a dollar and a half minimum with a seventy-five cent rate.

Q. What do you pay at the creamery?

A. We are paying the same there, under the boilers—twenty-five cents less five, at the creamery.

Q. Are you pretty well acquainted with the people living in the City of Laredo who use gas for residential purposes and for industrial purposes?

A. Yes, sir.

Q. Are you acquainted with the different farmers and industries along the river there that use gas for industrial purposes?

A. Yes, sir.

Q. Mr. Walker, I will ask you if for residential purposes, for instance, the price of gas was fifty-five cents, as fixed by the Railroad Commission's order, as against seventy-five cents, the old rate, would there be any increase in the City of Laredo?

Mr. Coates: Don't answer until I have had a chance to [fols. 1285-1290] make an objection, Mr. Walker.

The Witness: Yes, sir.

* * * * * * *

[fol. 1291] Q. Mr. Walker, I believe you testified you had been using gas since 1910?

[fol. 1292] A. 1913.

Q. 1913?

A. Yes, sir.

Q. Both for industrial and residential purposes?

A. I don't remember just when the residential gas began, but I do remember distinctly the year I began using it for industrial purposes.

Q. In the City of Laredo?

A. Yes, sir.

Q. And you have had an experience over that period of years, from 1913 down to the present time?

A. Yes, sir.

Q. In the use of gas?

A. Yes, sir.

Q. In the City of Laredo?

A. Well, the first gas that I used for industrial purposes was in the City of Laredo.

Q. You have had an experience with the raising of the price in other years, and the lowering of the price in other years, have you not?

A. Yes, sir.

Q. And you are familiar with the use and consumption of gas at a lower and a higher price?

A. Yes, sir.

Q. You have had that personal experience, and you have [fol. 1293] observed it in the community?

A. That is so, yes, sir.

Q. And the effect of the high price or the low price for gas——

A. Yes, sir.

Q. As to its use, is that correct?

A. Yes, sir, that is correct.

Mr. Bobbitt: We submit, Your Honor, that he has qualified.

The Court: Well, what is this man's acquaintance over the city? You have asked a general question about the whole City of Laredo. I don't know whether he know- whether he knows any one else.

Mr. Bobbitt: I asked him first about his experience.

The Court: You are not confining it to the question you asked him about his experience, but apply it to the whole City of Laredo. That is why I say I don't think he has qualified. You qualified him as to his own experience in the use of gas, but that question asked about the city in general.

Mr. Bobbitt: I think that runs us into hearsay, which was the question we got into the other day.

The Court: Expert testimony is nearly always based on hearsay.

Mr. Bobbitt: Yes, sir.

[fols. 1294-1295] Q. Are you acquainted with the use of gas by other people in the City of Laredo during that time?

A. Yes, sir.

Q. And the effect of the low price or the high price as to its general use by the people of the City of Laredo?

A. Yes, sir.

Q. And you know most of the people living there in the city, where you have lived for twenty-five years, don't you?

A. Yes, sir.

Q. And you have an opinion based on your knowledge of what the high and the low price of gas—the effect of it on its use in the City of Laredo?

A. Yes, sir.

Q. Generally in that community?

A. Yes, sir.

Q. From what you know and what you have observed and what you have experienced, is that correct?

A. Yes, sir.

* * * * * * *

[fol. 1296] Questions by Mr. Coates:

Q. Mr. Walker, you have never been engaged in the business of selling or distributing gas, have you sir?

A. No, sir.

Q. And what business have you been engaged in for the last fifteen or twenty years?

A. Mainly farming.

Q. And have you ever engaged in the business of seeking to solicit customers for any gas distribution system?

A. No, sir.

Q. And are you acquainted with the number of houses [fol. 1297] adjacent to—I mean on the same street with the company's lines, which are occupied at this time, but which are not using gas?

A. Will you ask that question again? I didn't follow you.

Q. I will get Mr. Beck to read it to you; will you read the question please? (Question is read.)

A. No, sir, I am not.

Q. And are you acquainted with the purposes for which residential consumers there in Laredo use gas?

A. What was that again—am I acquainted with what?

Q. With the purposes for which residential consumers there in Laredo use gas?

A. The purposes for which they use it?

Q. Yes.

A. Why, I think I am—it would be for heating purposes, cooking purposes and so on; general house use.

Q. And do you know whether or not practically all the houses within the city of Laredo, built within the last fifteen years, and containing four rooms or above, are equipped for use of nothing but gas?

A. No, sir; I am not acquainted with that.

Q. Do you know whether that is true or not, Mr. Walker?

A. Whether they are equipped to use gas?

Q. Yes, whether they have been built so as to use gas and, generally speaking, without flues for wood or coal use.

A. Well, I can only have an opinion in that; most of the houses there are equipped to use gas.

[fol. 1298] Q. And do practically all the houses there of say four rooms or better, use gas for cooking, water heating and space heating?

A. Well, I could not say practically, but the town generally uses gas.

Q. Do most of the people that use gas there for cooking—do they cook their meals all they want to?

A. Do they cook all they want to?

Q. Yes—that is, do they use as much gas as they need to cook their meals done enough to suit their taste?

A. I don't know. I could not answer questions like that.

Q. You don't know anybody there that goes without their meals being cooked because of the price of gas, do you, that have gas installed in their houses?

A. No.

Q. Do you know any specific people that do that?

A. No sir, I don't.

Q. And do you know anybody there that does without warm baths because of the 75 cent rate on gas? That is, who don't heat their water because of the 75 cent rate?

A. Well now, I have noticed this, now; that a great deal more wood comes into Laredo now than used to. It passes my farm and that wood is being taken in there for heating and cooking purposes, more than it used to be.

Q. And do you know to what class of population that wood is being sold?

A. I think I do.

[fol. 1299] Q. To what class?

A. I think it is to the Mexican extraction of population.

Q. A lage percent of the population inside of Laredo is of Mexican extraction, is it not, sir?

A. Yes, that is correct.

Q. Does that run to as much as 70 or 80 percent, in your judgment?

A. I wouldn't know just what per cent.

Q. And there is likewise a substantial poortion of the population which is of other foreign extraction, is there not, there in Laredo?

A. No, sir; not a substantial part.

Q. What per cent of the permanent population there in Laredo would you say is of Anglo-Saxon descent?

A. I would say about 30 per cent.

Q. And the standard of living and the mode of living and also the rate of pay of a pretty large per cent of this population of Mexican extraction is lower than that in the average Anglo-Saxon community, is it not—that is, in the interior of the state?

A. Yes, I think it is.

Q. And the purchasing power of those people as a whole is considerably lower, is it not?

A. Yes, I think so.

Q. Do you know—I know you can't state it definitely—but do you know the average size of family there, of Mexican extraction, there in Laredo?

[fol. 1300] A. No, sir; I could not tell you that.

Q. Would it be in excess, in your judgment, of the average size of the Anglo-Saxon family on the interior?

A. You mean the average size of the Mexican family would be in excess?

Q. Yes.

A. Yes, I think so. I think their families are larger.

Q. On the whole, they have more children and bigger families, do they not?

A. I would think so, yes.

Q. And it is quite common to see two families living under the same roof, is it not, among the laboring class of Mexican extraction?

A. Well, no sir, I wouldn't say it is common.

Q. Well, you do see it, don't you?

A. I see them living on the same lot, but not under the same roof.

. . . . . .

[fol. 1301] Questions by Mr. Bobbitt:

Q. Mr. Walker, I believe you stated you have been living in Laredo for twenty-five years, and have been using gas for residential purposes and for fuel or for industrial purposes since 1913?

A. Yes.

Q. And you are acquainted with the general use of gas in that community for residential and other purposes?

A. Yes.

Q. I will ask you this question, Mr. Walker: whether or not in your opinion there would be an increased use of gas as a result of the putting into effect of the 55 cent rate, as ordered by the Commission, as against the 75 cent rate—the old or the existing rate?

A. I think there would be an increase in consumption; I don't think there is any doubt about it.

Q. Do you think there would be an increase in use by existing customers?

A. Yes.

Q. What about the increased number of individual customers?

A. I believe they would increase too.

Q. They would also increase, in your judgment?

A. Yes.

[fol. 1302] Q. Do you know whether or not, Mr. Walker, there are a substantial number of houses or homes in the City of Laredo, say of four rooms or three rooms or above, not now equipped with facilities for using gas, or which are not using gas?

A. There are a great many of the small houses among the Mexican people that are not using gas, that I believe would use it if the rate was lowered to 55 cents.

Q. What fuel are they now using, generally—if you know?

A. I think they are using wood, and it is being brought for long distances.

Q. How far?

A. All the way from 20 to 50 miles.

Q. How is it brought into the city?

A. In trucks and wagons.

Q. Approximately, if you know, how many trucks are there engaged in bringing wood into the city for the purposes stated?

A. I could not say the number, yet I just noticed there is a good many more the last two or three years, been coming into town with wood on them.

Q. Mr. Walker, I believe you testified you are using gas in your pumping plants, and paying 20 cents a thousand for it?

A. Yes.

Q. The testimony here in this record shows that you are using gas and that you are satisfied with that price that you are paying for gas for fuel purposes.

Mr. Coates: I object to that, as——

[fol. 1303] The Court: I do not recall any such testimony as that.

Mr. Coates: And we object to the question, because it is based on——

Mr. Bobbitt: Well, I don't think there is any question about it—Mr. Stein, the district manager, said——

The Court: I am going to strike the statement made by the lawyer. You can ask your question now. But your statement that the record shows—gentlemen, you will not pay any attention to the statement of the lawyer, General Bobbitt, as to what the record shows. It may show exactly what he says and it may not, but I am eliminating his statement from the record, because Mr. Bobbitt is not under oath and cannot testify.

Mr. Bobbitt: I was just making a basis for my question from my memory of what happened a few days ago.

The Court: Well, I can't remember that, and I am just striking your statement.

Mr. Coates: We object because it is wholly immaterial and has no bearing on any issue in this case, and if an attempt to rebut testimony brought out, it is rebuttal testimony on collateral issues.

The Court: So far, everything is out of the record now.

Mr. Coates: And it is highly prejudicial to this defendant's rights.

Q. Are you satisfied with the price of 20 cents a thousand for gas for fuel purposes?

[fol. 1304] Mr. Coates: The same objection.

The Court: I sustain the objection.

A. No, sir; I am not satisfied.

The Court: Wait a minute; I sustained an objection to that question.

Mr. Coates: And will the court instruct the jury not to consider that answer?

The Court: Gentlemen, the answer just given by the witness, you will not consider because he answered it inadvertently after I sustained an objection.

Q. Have you discussed the price you are paying there for gas at the pumping stations there, with the managers of the United Gas Public Service Company at Laredo?

A. My discussion has been mainly with Mr. Slimpin, the field manager. I come in contact with him more than any of the other men, and my discussion of the cost and prices and so on, has been with him.

Q. You discussed it also with Mr. Stein, the district manager, have you not?

A. Yes, but not as much as Mr. Slimpin.

Q. Have you notified the officers or the managers of United Gas Public Service Company that you will have to cease the use of gas for industrial purposes, at that price?

Mr. Coates: Now, our same objection, that it is not material for any purposes in this case, and is the use of a self-serving declaration.

[fol. 1305] The Court: I can not see, gentlemen, what effect the notice would have, or what materiality it would have in this case. I sustain the objection.

Q. Do you plan to continue or discontinue the use of gas there at that price?

Mr. Coates: The same objection.

The Court: Well now, that question might be admissible with certain qualifications, but as it is, I will sustain the objection.

Q. Well, have you been negotiating with the officers of the United Gas Public Service Company and their representatives there, in respect to the continued use of gas for industrial purposes?

Mr. Coates: The same objection.
The Court: I overrule that objection.
Mr. Coates: Note our exception.

Q. Read the question, please, Mr. Reporter. (Question is read)
A. I have talked to Mr. Slimpin about it, and told him——

Mr. Coates: Object to that as not responsive——
The Court: Now wait a minute—you have answered the question.

Q. What is the result of your negotiation with those officers?

Mr. Coates: The same objection.
The Court: Do you mean has he continued to use it or quit?

Q. Yes.

Mr. Coates: The same objection, and because it is a hear-
[fol. 1306] say declaration and self-serving.
The Court: Overruled.
Mr. Coates: Note our exception.

A. I am yet using the gas.
Q. How long are you going to continue to use it?

Mr. Coates: Our objection goes to all this line of testimony, and it is too remote and speculative.
The Court: If he knows and can answer definitely as to some date, I will let him answer it.

Q. Read the question, please. (Question is read)
A. I do not know.
Q. Have you given them any advice in respect to your continued use of the gas?

Mr. Coates: The same objection.
The Court: I sustain the objection.

Q. Does the rate they are charging you for gas have anything to do with your use of it, and any bearing on whether or not you will continue to use it or stop using it?

Mr. Coates: We object to that for each and all the reasons for which we objected to this witness' testimony, that being the objection which we have denominated here in the record the objection to Mr. J. O. Walker's opinion testimony.

The Court: I will sustain the objection.
Mr. Bobbitt: Note our exception.

Q. Are you negotiating with other parties for the use of other fuel for the same purposes you are now using gas?

[fols. 1307-1308] Mr. Coates: The same objection.
The Court: Overruled.
Mr. Coates: Note our exception.

A. Yes.
Q. Who?
A. Other fuel, you mean?
Q. Yes, who is that?
A. With refineries located around Laredo.

* * * * * * *

[fol. 1309] Q. You are acquainted, Mr. Walker, with a number of industries located inside the city limits of the City of Laredo, using gas for industrial purposes?
A. Yes.
[fol. 1310] Q. The Haussman Packing Company, and others, I believe?
A. Yes.
Q. And I believe you operate a creamery within the City of Laredo and use gas at that creamery?
A. Yes.

* * * * * * *

[fol. 1311] Q. Now, Mr. Walker, it is a fact, is it not that seventy per cent or above of the population living inside the city limits of Laredo is of Mexican extraction?
A. Well, I would say about that.
Q. About that?
A. Yes, sir.
Q. And that those people, generally speaking, have a lower standard of living and a lower earning power than the average Anglo-Saxon; isn't that true?
A. Well, a part of them yes; I would not say that seventy per cent have.
Q. But a substantial part of them have, have they not?
A. Well, I could not tell just what part have. There is part of the people that have a lower standard of living than the other people.

Q. And they earn substantially less than the average Anglo-Saxon?

A. Yes, sir.

Mr. Bobbitt: Speak out, Mr. Walker, so the jury can hear you.

Q. And those people—that is, the lower laboring class of Mexicans—as a general rule have larger families than the average Anglo-Saxon, do they not?

A. I think they do, yes, sir.

Q. Do those people live in any particular part of town, or are they scattered pretty well all over town?

A. They live pretty well all over town.

[fol. 1312] Q. Pretty well all over town?

A. Yes, sir.

Q. And do you know whether those people are paid enough—I am referring to the lower Mexican class—to use a substantial amount of gas at any price?

A. At any price?

Q. Yes, sir.

A. Yes, sir; they would take it at any price.

Q. And use a substantial amount of gas at fifty-five cents a thousand?

A. Well, I think a great many more would use it at fifty-five cents a thousand than are using it now at seventy-five cents a thousand.

Q. Do you know about how much gas per month or per year those people would probably use?

A. No, I could not tell that.

Q. And do you know for what purpose they would use it—would they use it for cooking?

A. Use it for cooking and heating purposes.

Q. Would they put in hot water heaters?

A. Some would.

Q. Well, would any substantial part of them put in hot water heaters?

A. I don't think any large amount would.

Q. The present rate for residential consumers has been in effect in Laredo since 1921, has it not?

A. I don't remember the exact year, but I think it was about that time.

[fol. 1313] Q. For ten years or more. Now, in your judgment isn't that increased use of wood brought about in large part by the economic conditions?

A. Well, some of it no doubt has—not all of it.

Q. Have you anything to do with the Relief Work there in Laredo?

A. No, sir.

Q. Do you know how many families are listed as being wholly or partly public dependents?

A. No, sir.

Q. Do you know whether there are a substantial number of people who are?

A. Well, not a substantial number. I know that there are quite a few men that have been used on the C. W. A. work and some on the Direct Relief, as they call it.

Q. And do not those people come very largely from the Mexican class to which you have referred?

A. Well, they would be, because there is more population in that class, but there are some American families in that work also.

Q. Mr. Walker, have your sales of products of the creamery company fallen off in the last few years?

A. They fell off in 1931, 1932 and 1933; they are up again some now.

Q. Up some now?

A. Yes, sir.

Q. You regard that as the result of economic conditions, do you not?

[fol. 1314] A. Yes, sir.

Q. And volume sales of all businesses during the period of what we know as the depression have largely fallen off, have they not?

A. Well, I would think that most businesses have.

Q. And because of the depression?

A. Well, that would be my opinion, yes, sir.

Q. Now, I believe the record reflects here that the existing rate is a rate of seventy-five cents, less ten per cent discount for prompt payment of bills, which would be sixty-seven and a half cents, and what has been referred to as the fifty-five cent rate is a rate of fifty-five cents plus ten per cent penalty for non-payment of bills within ten days; you understand that, do you not?

A. Well, I don't know how the rate is, but then I understand just what you are saying.

Q. Yes. In your judgment would the margin of difference —that is, between sixty-seven and a half cents net and

fifty-five cents net—create a substantial increase of use?

A. Well, with the rate of fifty-five cents, don't they get the ten per cent discount there also?

Q. No, there is a ten per cent penalty on that.

A. Well, I believe the lowering of the rates within reason no doubt would increase the consumption; there is no question in my mind about that.

Q. There is no question about it?

A. Yes, sir.

[fol. 1315] Q. Now, Mr. Walker, you said "the lowering of the rates within reason". In your judgment would the lowering of the rates from sixty-seven and a half cents net to fifty-five cents plus ten per cent penalty result in a substantial increase in the consumption by existing gas consumers?

A. I believe it would.

Q. You think that ten cents or twelve and a half cents per thousand cubic feet would increase such consumption?

A. I believe it would, for this reason: Most of the people think of seventy-five cents and fifty-five; that is the way the people are thinking about it, and the families naturally—a great many families I know are cutting down on the use of gas, cutting it off, on account of the price. If it got down lower they would naturally use more.

Q. You can cut the price of gas down to where they will think gas is practically cheaper than matches and leave the windows open?

A. Well, I guess that might be true.

Q. That is a condition you find in gas fields?

A. Well, I don't know about gas fields.

Q. Well, the people there know that they get a ten per cent discount on the seventy-five cent rate, those who have been using gas for any length of time, don't they?

A. The people know that?

Q. Yes.

A. I think they do, yes, sir.

[fol. 1316] Q. And if the people knew that the fifty-five cent rate carried a penalty of ten per cent they would pretty soon know that—I mean if that were a fact—would they not?

A. I think they would, yes, sir.

Q. Then they would pretty shortly become acquainted with the real facts and would not look at it as a difference of twenty cents a thousand cubic feet, would they?

A. Well, they are interested in any economy—there is no question about that—any economy they can get in the reduction.

Q. Of course, we all like to pay less for everything we have to buy?

A. Well, not down to where no one could make anything out of it. Nobody wants something for nothing.

Q. But there are many of your customers no doubt that would like to pay less for their cream and milk and butter?

A. Yes, sir.

Mr. Coates: That is all.

* * * * * * * *

[fol. 1317] Louis Hausman, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name, please, sir?

A. Louis Hausman.

Q. Where do you live, Mr. Hausman?

A. Laredo, Texas.

Q. How long have you lived there?

A. Since 1923.

Q. What business are you engaged in, Mr. Hausman?

A. In the meat packing business.

[fol. 1318] Q. Do you own and are you President of the Hausman Packing Company?

A. Yes, sir.

Q. How long have you been operating that business in the city of Laredo?

A. Eleven years.

Q. Eleven years. Have you been operating continuously during those eleven years?

A. Yes, sir.

Q. And you are now operating that business?

A. Yes, sir.

Q. At what capacity is the plant now being operated, Mr. Hausman, approximately?

A. Approximately about seventy-five per cent.

Q. Seventy-five per cent. What is the nature generally—not in too much detail, what is the nature of the business you are engaged in there?

A. We are making fertilizer and use steam for that, and we are also refining cotton-seed oil and packing ham and killing cattle.

Q. In the general packing business—cattle, hogs and sheep and so forth?

A. Yes, sir.

Q. What kind of fuel do you use in your packing plant in Laredo?

A. At the present time we use oil.

Q. What kind of oil?

A. Different grades; we use distillate oil for our distillate [fol. 1319] engine and fuel oil for our boilers.

Q. Are you equipped for using natural gas in your packing plant?

A. Yes, sir.

Q. How long have you been so equipped?

A. Ever since we started.

Q. Are you now using natural gas?

A. No, sir, very little. We use some in the office during the winter time for heating purposes and also use some in the emergency gas engines that we have.

Q. What are you now paying for such gas as you use?

A. We have three meters; one is seventy-five cents for the office; one for the gas engines is fifty cents, and boilers, we have not been using it; that would be at the rate of twenty cents.

Q. When did you start using oil for fuel purposes?

A. Some time late in 1931 and beginning of 1932, in that neighborhood.

Q. Why did you start using oil for fuel purposes?

A. We could not compete with our competitors on fuel; our bills ran too high.

Mr. Coates: At this time we make the same objection that we made to the testimony of Mr. J. O. Walker and object for each and all the reasons stated in that objection, and for the further reason that the answer sought to be elicited from the witness and which the witness has given attempts

to state a comparison between the fuel values of different fuels, which is legally inadmissible for any and all purposes in this case.

[fol. 1320] The Court: I take it that they will complete the testimony so as to make it admissible.

Mr. Bobbitt: Yes, sir.

The Court: If not, I will strike it out.

Q. Did you state when you quit the use of natural gas?

A. At the beginning of 1932, I believe.

Q. Why did you quit using natural gas for fuel purposes?

Mr. Coates: Our objection goes to all that.

The Court: Didn't he answer that a while ago?

Mr. Bobbitt: No, sir.

A. It was too expensive for fuel purposes. We could not afford to pay twenty cents for gas for the purpose we used it.

Q. Prior to the beginning of the use by you of oil for fuel purposes what did you use?

A. Gas.

Q. Entirely?

A. Yes, sir.

Q. Approximately what was the monthly bill, if you remember, that you paid for natural gas for fuel purposes?

A. If my recollection is correct, I think we paid between three hundred and five hundred dollars a month for boiler purposes and about a hundred and fifty for gas engine and about three or four dollars for the office.

Mr. Coates: Will you read the answer?

(Thereupon the Reporter read as follows: "A. If my recollection is correct, I think we paid between three hundred and five hundred dollars a month for boiler purposes [fol. 1321] and about a hundred and fifty for gas engine and about three or four dollars for the office.")

Q. You purchased gas from the United Gas Public Service Company?

A. Yes.

Q. The local concern distributing gas in Laredo?

A. What we call the Border Gas Company.

Q. The old Border Gas Company; it is now the United Gas Public Service Company. Mr. Hausman, in your ex-

perience in your own business there in the city of Laredo in the use of gas, does the price of gas, as to whether it is higher or lower, have any effect upon your use of gas in volume?

Mr. Coates: The same objection, if the Court please.
The Court: The objection is overruled.
Mr. Coates: Note the exception.

A. It has.
Q. What effect does it have upon it?
A. Well, we can't use gas at those figures; we have to get a cheaper fuel—get something that is cheaper than gas.
Q. What price could you and would you pay for gas for industrial purposes in your packing plant in Laredo and continue the use of that gas as you have heretofore used it?

Mr. Coates: We object to that for all the reasons stated and for the further reason that it is not shown——
The Court: Let me ask this question before we go any further: The Railroad Commission did not set any industrial rate?
Mr. Coates: No, sir.
The Court: The objection is sustained.
Mr. Bobbitt: If the Court please, they complain——

(Thereupon counsel for plaintiffs and defendant conferred with the Court, out of the hearing of the jury.)

[fol. 1322] By Mr. Bobbitt:

Q. How long did you say you had lived in Laredo, Mr. Hausman?
A. Eleven years.
Q. You live in the City of Laredo?
A. Yes, sir.
Q. And use gas for residential purposes?
A. Yes, sir.
Q. Are you familiar with the general use of gas for residential purposes throughout the City of Laredo?
A. I am in a way.
Q. Are you familiar generally with the use of gas for industrial and commercial purposes in the City of Laredo?
A. Yes, sir.
Q. You have had a good deal of experience personally

and with others as to the use of gas generally throughout the community?

A. Yes, sir.

Q. Mr. Hausman, I will ask you this question: In your opinion would the lowering of the price of gas, or the sale of gas in the City of Laredo at the 55-cent rate as prescribed by the Commission, as against the present 75-cent rate, result in a larger or smaller use of gas in the City of Laredo?

Mr. Coates: We make the same objection—we make each and all of the objections previously urged.

The Court: The objection is overruled. The man may state his opinion.

[fol. 1323] A. In my opinion it would increase the sale of gas if it was lowered.

Mr. Coates: Also, we make the objection that it is based on a wrong assumption of facts.

A. I am just going on our own home consumption. We have a gas stove, and we also have a gas heater in our house; and also in the yard a gas line, where the wash woman may wash clothes. My wife discontinued washing clothes with gas because the bill was too high, and now uses wood, while if it were lowered they would not go to the trouble to use wood; and if that applies to our house, I believe it applies all over town.

Q. That is your opinion?

A. Yes, sir.

Mr. Coates: We renew our objection, because his testimony shows that he bases his assertions as to everybody in town, in general, on his own personal experience.

The Court: The objection is overruled.

Mr. Coates: Note our exception as to all this.

Q. Would that apply, that the lower price of gas would result in an increase in the number of customers?

Mr. Coates: Our objection and exception goes to all this testimony.

A. I believe it would.

Q. And also in the volume of consumption by the existing [fol. 1324] customers, in your opinion?

A. Yes, sir.

Mr. Bobbitt: That is all.

Cross-examination.

Questions by Mr. Coates:

Q. Do you own your home there in Laredo, Mr. Hausman?

A. Yes, sir.

Q. What size home is it?

A. Five room house.

Q. Do you use gas for cooking?

A. Yes, sir.

Q. Do you use gas for hearing your water?

A. Yes, sir.

Q. Do you use gas to keep warm in the winter time?

A. Yes, sir.

Q. Do you know what your average annual gas bill has been for the last three years?

A. I don't pay the gas bill. Mrs. Hausman pays it, so I am not able to say; but I believe it is in the neighborhood of six or seven dollars in the winter time.

Q. Between six and seven dollars per month in the winter time?

A. Yes, sir.

Q. And how much in the summer time?

A. Well, in the summer time, about half of that.

Q. And how long does the summer time last down there in Laredo?

[fol. 1325] The Court: He has said he didn't know much about it; that all he could do was guess.

A. If you have to know, Mrs. Hausman is here and can answer that.

Mr. Coates: He has testified that he would use more gas if the rate were 55-cents net instead of 67½ net, and what we are doing is crossing him on that direct testimony he has given.

The Court: I don't want to comment on any of the testimony. Go ahead and cross examine him.

Q. How often do they wash at your house, Mr. Hausman—that is, wash the clothes?

A. I reckon once a week.

Q. Do you know how much gas is used to boil the clothes?

Mr. Bobbitt: He told you just now that he burned mesquite wood.

Q. But did you formerly burn gas in the back-yard?

A. I did at the beginning.

Q. When did you stop?

A. I think that has been stopped ever since we moved into this particular home. We tried it out and used gas for about six months; but it has been discontinued, and that must be around about three years.

Q. About three years. You haven't used gas for boiling clothes for about three years, and you don't know how much gas was used for boiling those clothes, do you?

[fol. 1326] A. No, sir.

Q. What character of heat do you use for ironing now?

A. Electricity.

Q. You have an electric iron?

A. Yes.

Q. And have you used that all along?

A. You are going into something I don't know. I don't know what is going on at home. I am not attending to the house; that is the wife's job. I don't know how much ironing is done.

Q. So you don't know how long you have been using that electric iron around the house?

A. I have seen an electric iron off and on around the house, but I don't know how much or how often they use it.

Q. Mr. Hausman, at this time are you likewise making the electric energy that you use in your plant there?

A. Yes, sir.

Q. In fact, you put in what might be called a little refinery there, didn't you, in your plant?

A. Yes, sir.

Q. And you refine the gasoline that you used in your trucks, didn't you?

A. We do. That is under another name. That is not Hausman Brothers; it was Louis Hausman Oil Company.

Q. You use there in your packing plant the gasoline that you get from the Louis Hausman Oil Company to operate your trucks and automobiles?

[fol. 1327] A. Correct.

Q. And you likewise use a by-product, or refined product, of that crude oil to generate electricity, do you?

A. We use oil to generate electricity.

Q. You likewise use fuel oil under your boilers in the place of gas?

A. Yes, sir. Let me tell you this, though, that the gas company there was the cause of us going into the oil business.

Q. Was it the cause of your making your own electricity instead of buying it from the electric company?

A. Yes, sir; because at that time we had gas engines that drove the compressors that made thirty-five tons of ice a day. We used gas for that purpose, and we would now—those engines are still in existence, but we are not using it—but they were the cause of our going into the oil business.

Q. You have gone into that business and have your investment made?

A. Yes, sir; we are in it now.

Q. You say your monthly bill for gas under the boilers was from three to five hundred dollars a month?

A. Yes, sir.

* * * * * * *

[fol. 1328] Redirect examination.

Questions by Mr. Bobbitt:

Q. You still have your gas engine there ready to use gas if you could get it at the right price?

A. Yes, sir.

Mr. Coates: We object to that question, because it is prejudicial, and calls for a conclusion as to what is the right price, and is immaterial and has no bearing on any issue in this case. It calls for a conclusion of this witness as to the ultimate issue to be decided in this case and invades the province of the Court and jury.

The Court: I will order stricken out that part as to "the right price".

Mr. Coates: Note our exception.

Q. If I understood your testimony in reply to Mr. Coates' question, because of the increased price of gas your concern went out and sought crude oil for fuel; is that correct?

A. Yes, sir.

Q. And you still have your gas engines and all the facilities there to use gas at your plant?

A. We still have all the connections ready to use gas if we could buy it at the right price.

Q. And you would like to use gas for fuel purposes?

A. If we could get it at the right price.

Mr. Bobbitt: That is all.

[fol. 1329] Recross-examination.

Questions by Mr. Coates:

Q. When did you put in this refinery?

A. In 1932, sometime.

Q. What was the price of fuel oil per barrel at that time?

A. Fuel oil?

Q. Yes, sir; or crude oil?

A. About 75 cents a barrel.

Q. And did it continue at 75—was it 75 cents a barrel at the time you put in your refinery?

A. Yes, sir.

Q. And did it continue at that rate while you operated your refinery?

A. No; it has been down as low as 35 cents.

Q. When it was down to 35 cents did you stock up on it?

A. No, sir; we had no storage capacity; we got it about as we needed it.

Q. What is the price of crude oil now?

A. Mirando crude is 80 cents.

Q. Are you buying it at 80 cents delivered at your plant now?

A. We are buying it at all kinds of prices. We are not burning no crude oil under our boilers.

Q. I understand, but you are refining crude oil?

A. We are buying crude oil, but not Mirando crude.

Q. What are you paying for crude now?

A. Pay eighty a barrel delivered at Laredo.

[fol. 1330] Q. Whereas you were formerly paying 35 cents?

A. But not the same oil.

Q. Well, did the lower price of fuel oil at the time you put in your refinery have anything to do with your putting in that refinery?

A. Well, it had this much to do: That we could not pay that much for natural gas to burn under the boilers, and we made a test on it to see what it would cost to burn oil based on fuel oil at 50 cents, and we found that we could operate for less than half; and we gave the Gas Company a chance to come down on the gas, but they refused to do it.

Q. So you installed this refinery, because fuel oil at 50 cents was cheaper than gas at what you were paying for it?

A. Yes.

Q. Now, that oil is back up you would like to get gas back, wouldn't you?

A. No; I don't know that oil is back up. You can buy all the fuel oil you want for 60 cents a barrel.

Q. From whom?

A. From the nearest refineries.

Q. Who?

A. The Misko Refinery at Mirando; that is the nearest point.

Q. Is that delivered at your plant at 60 cents?

A. I believe we can buy it at 60. The freight rate is only 18 cents a barrel from Mirando down to us.

Q. Have you tried to buy any recently at that price?

[fols. 1331-1341] A. We have not bought any recently.

Mr. Coates: That is all.

Redirect examination.

Questions by Mr. Bobbitt:

Q. One question, Mr. Hausman. You are equipped to burn natural gas?

A. Yes, sir.

Q. If you could get gas at your plant in the City of Laredo at the same price that the same concern transports the same gas across to Nuevo Laredo and sells it there for, would you now be using natural gas?

A. Yes, sir.

* * * * * * *

[fol. 1342] JACK SCALES, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. Your name is Jack Scales?

A. Yes, sir.

Q. Where do you live?

A. Laredo.

[fol. 1343] Q. How old are you?

A. Thirty-four.

Q. What business are you engaged in?
A. Ice manufacturer.
Q. What is the name of your concern there?
A. The American Service Company.
Q. It is engaged in the ice manufacturing business?
A. Yes, sir.
Q. Where is your plant located?
A. 2100 Scott Street.
Q. Where?
A. In Laredo.
Q. Your plant is running at what capacity?
A. About fifty per cent right now.
Q. That is in early spring?
A. Yes, sir.
Q. At other period of the year it is larger?
A. It runs a hundred per cent in summer.
Q. What fuel do you use in your ice manufacturing business?
A. We use gas.
Q. How long have you been using gas?
A. Since 1920—ever since the plant was built.
Q. What price do you pay for gas?
A. We pay for boiler gas 18 cents a thousand for the first five million cubic feet, and 17 cents a thousand for all over that. Engine gas is 50 cents a thousand for the [fol. 1344] first 100,000 cubic feet; 35 cents a thousand for the next 100,000 cubic feet; 30 cents a thousand for the next 100,000 cubic feet; and 25 cents a thousand for all over that.
Q. What volumes of gas have you used in that plant for the last six or eight months? Have you got the notation there in thousand cubic feet?
A. Yes, sir. Well, the engines was about an average of 600,000 cubic feet a month; and the boilers will average about, I guess, about 6,000,000 cubic feet a month.
Q. A month?
A. Yes, sir.
Q. And what did you say the price was for boiler gas?
A. Eighteen cents a thousand for the first five million cubic feet, and seventeen cents for all over.
Q. And for the other?
A. Fifty cents for the first 100,000 cubic feet; 35 cents for the next 100,000 cubic feet; 30 cents for the next 100,000 cubic feet; and 25 cents for all over.

Q. Is the price of fuel a substantial factor in the operation of your plant.

Mr. Coates: We object to that as too indefinite.
The Court: The objection is overruled.
Mr. Coates: Note our exception.

A. Yes, sir; it is.

Q. It has a bearing on the amount of business you do, and the amount of gas that you burn, doesn't it?

A. Yes, sir.

[fol. 1345] Q. Mr. Scales, are you acquainted generally with the—you reside in the City of Laredo?

A. Yes, sir.

Q. You have your family there?

A. Yes, sir.

Q. Do you use gas at your residence?

A. Yes, sir.

Q. Are you familiar generally with the use of gas in the City of Laredo by the industries engaged in business within the City of Laredo?

A. Yes, sir.

Q. Are you likewise familiar with the use of gas by citizens within the City of Laredo for residential purposes?

A. Yes, sir.

Q. How long have you been engaged in the ice manufacturing business?

A. About three years.

* * * * * * *

[fol. 1346] Questions by Mr. Coates for purpose of qualifying witness:

Q. Have you ever engaged in the business of distributing and selling natural gas?

A. No, sir.

Q. Have you ever operated a natural gas distribution system?

A. No, sir.

Q. And do you know how much the average residential consumer may be expected to use there in Laredo?

A. No.

Q. With respect to residential consumers, isn't about all you know about what anybody is using, except yourself, or what they would use, is what somebody has told you?

A. True.

Mr. Coates: We renew our objection.
The Court: The objection is overruled.
Mr. Coates: Note our exception.

Q. And with respect to the use of gas by other industrial consumers there, isn't about all that you know about that is what they have told you?
A. Yes, sir.

* * * * * * *

[fols. 1347-1351] Questions by Mr. Bobbitt:

Q. Answer the question.
A. Yes, sir; it would.
Q. Would it increase it or decrease it?
A. Increase it.
Q. Substantially, in your opinion?
A. Yes, sir.
Q. The same question with respect to the use of gas for residential purposes: would the lowering of the price for residential purposes to 55 cents per thousand cubic feet, as fixed by the Commission, as against the old existing price of 75 cents, result, in your opinion, in an increased use of gas within the City of Laredo?
A. Yes, sir; I think it would.
Q. Would there be an increase, in your opinion, in the number of users of gas?
A. Yes, sir; I think so.
Q. Would there not be an increase in the volume of gas used by existing customers?
A. Yes, sir.

Mr. Coates: It is understood our objection goes to all this testimony?
The Court: Yes, sir.
Mr. Bobbitt: I believe that is all.

* * * * * * *

[fol. 1352] H. M. IRVIN, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name, please, sir?
A. H. M. Irvin.
Q. H. M. Irvin. How do you spell it?
[fol. 1353] A. I-r-v-i-n.
Q. How old are you?
A. Thirty-three.
Q. Where do you live, Mr. Irvin?
A. Laredo, Texas.
Q. Do you reside in the city limits?
A. I reside in the city limits of Laredo.
Q. Do you own your residence there?
A. No, sir; I rent my residence.
Q. You live there, however?
A. I live there, yes, sir.
Q. What business are you in?
A. I am engaged in smelting and refining antimony.
Q. Smelting and refining antimony. What kind of business is that, Mr. Irvin?
A. Well, it is the only plant of its kind in the United States. It is a metal which most people are not familiar with. We reduce ore in a blast furnace and later refine it in reverberator furnaces.
Q. Is that the Texas Mining and Smelting Company?
A. Yes, sir.
Q. Called the Timonox plant?
A. That is right.
Q. How long have you been engaged in that business, Mr. Irvin?
A. Well, I have been engaged in that business about ten years but in Laredo since 1930—the end of 1930.
[fol. 1354] Mr. Coates: Excuse me. Is your plant located within the city limits?
A. The plant is not within the city limits.
Mr. Coates: About how far is it?
A. It is about three miles north of the city limits.
Q. Is there any part of your smelting properties located within the city limits?

A. No, sir.

Q. Well, what fuel do you use out there in the smelter?

A. We use——

Mr. Coates: The same objection, if the Court please. It is shown that it is located outside the city.

The Court: Well, what objection is there to showing what fuel he uses?

Mr. Coates: Well, it is a waste of time.

The Court: Well, the objection is sustained.

Mr. Bobbitt: Well, we are not permitted to go into that?

The Court: No, sir.

Q. Well, you use gas furnished by the United Gas Public Service Company at your residence, do you not?

A. Yes, sir.

Q. Are you familiar, Mr. Irvin, with the use of gas for residential purposes within the city of Laredo?

A. Yes, sir.

Q. From your own experience and that of your neighbors and friends living there within the city?

A. Yes, sir.

[fol. 1355] Mr. Coates: May I ask him——

Mr. Bobbitt: Let me get through.

Q. Are you acquainted generally, Mr. Irvin, with the use of natural gas for residential purposes within the city of Laredo?

A. Yes, sir.

Mr. Bobbitt: Now, go ahead.

Questions by Mr. Coates:

Q. You have never engaged in the business of selling and distributing natural gas, have you, Mr. Irvin?

A. No.

Q. Do you know the average annual consumption per residential consumer in Laredo?

A. I believe it is about 36,000 to 40,000 cubic feet.

Q. From what source did you obtain that information?

A. I was told.

Q. I see. Do you know the average amount per residential consumer used for cooking?

A. It is about 1,500 to 2,000 cubic feet per month.

Q. And about how much for water heating?

A. Well, that depends upon the size of the family. I imagine an ordinary family would use about a thousand cubic feet per month.

Q. And how much for heating?

A. Well, that depends on the size of the house. I imagine a five-room house, kept warm, would use about 5,000 cubic feet per month.

Q. For how many months?

[fol. 1356] A. For about three to four months.

Q. Now, have you ever made a survey of consumers in Laredo to see which ones are using gas and which are not?

A. Not an extensive survey of the town, no, sir.

Q. Well, have you made any character of survey?

A. Well, it so happens that in my work I am called upon to analyze different types of consumption of gas within our plant and within the houses of the workmen, and I have that knowledge.

Q. And have you made a similar survey with reference to the number of users of water there in Laredo?

A. No.

Q. Do you know whether there are more gas meters or more water meters in Laredo?

A. I should say there are more water meters.

Q. That is the usual situation that you find in a city, is it not?

A. I imagine so, yes.

Q. And do you know whether there are more electric meters or more gas meters?

A. I don't know.

Q. Do you think there are more gas meters or more telephones?

A. I don't know.

Q. But if it should happen that there are more gas meters than water meters, that shows a pretty high extent of use?

A. I think so, yes, sir.

[fol. 1357] Q. Now, as a matter of fact, isn't the extent of your knowledge about what the people do based on your conversations with other people and what they have told you?

A. Well, yes. I have not seen everybody's gas bill.

Q. And you can't speak with authority and personal knowledge as to any one except yourself?

A. No, that is not true, because certain people I have talked to directly about their individual consumption; they are my friends.

Q. You know what they have told you?

A. Yes, sir.

* * * * * * *

[fol. 1358] Q. Now, Mr. Irvin, from your knowledge personally and your knowledge of the situation of natural gas within the city of Laredo for residential purposes, would there, in your opinion, be an increase in the use of gas if the price were fifty-five cents per thousand cubic feet as fixed by the Commission as against the higher price of seventy-five cents?

Mr. Coates: The same objection.

The Court: The objection is overruled. Go ahead.

A. I think there would be an increase, for heating, distinctly.

Q. For residential heating?

A. For residential heating, yes, sir.

Q. In your opinion would it result in an increase in the number of consumers or users?

A. Yes.

Q. In your opinion would there be an increase in the volume of existing consumers?

A. Yes, sir.

Q. At the lower price as against the higher price?

A. Yes, sir.

Mr. Bobbitt: That is all.

[fol. 1359] Cross-examination.

Questions by Mr. Coates:

Q. In your acquaintanceship with Laredo do you know about what per cent of the population down there is of Mexican extraction?

A. I believe there is supposed to be twenty-six thousand out of thirty-two thousand of Mexican extraction.

Q. It is a substantial part—I don't mean all, but is a substantial part of the Mexican population of the lower class?

A. Well, a substantial part, yes.

Mr. Bobbitt: What do you mean by "the lower class"—do you mean folks that work?

Mr. Coates: No. I have heard you describe it, Mr. Bobbitt,——

Mr. Bobbitt: I just asked what you meant.

The Court: Well, Gentlemen, let's conduct this case like it ought to be.

Mr. Bobbitt: Yes, sir; I think so.

Q. Now, is the purchasing power of the people in the town, so far as you know—that is, of the town itself—to be compared with a town having an Anglo-Saxon population such as we have inland and northward from there?

A. No.

Q. Do you know the total number of bank deposits there in the town?

The Court: Total what?

[fol. 1360] Mr. Coates: Bank deposits.

A. Number of depositors?

Q. Yes.

A. No, sir.

Q. I mean the total number of bank deposits.

The Court: Go ahead.

Q. Do you know how many people there are in Laredo that make a dollar a day or less?

A. I don't know exactly. Well, now, in Laredo proper there is hardly anybody that does. Of course, the Government relief compaigns and N. R. A. have raised them above a dollar a day. It is according to whether you are speaking of the district of Laredo or the city of Laredo.

Q. The city of Laredo?

A. I would say you would have a hard time finding anybody that works for less than that.

Q. That is because of the Government relief work?

A. Yes, sir, and the N. R. A.

Q. Do you know how many or what per cent of the population are either partly or wholly dependent either on public charity or Government relief work?

A. Well, there were some figures published in the paper. I believe there were about 1700 on the C. W. A. payroll and about 1200 on direct relief.

Q. And do you know how many houses of four rooms or better adjacent to the company's lines and now occupied are not using gas?

A. No, I don't know.

[fol. 1361-1362] Mr. Coates: I believe that is all.

Redirect examination.

Questions by Mr. Bobbitt:

Q. You see dozens of trucks going by your plant out there hauling mesquite wood into town, don't you?

A. Yes, sir.

Q. Every day?

A. Every day, yes, sir.

* * * * * * *

[fol. 1363] Henry E. Elrod resumed his testimony and testified as follows:

Cross-examination continued.

Questions by Mr. Coates:

Q. Mr. Elrod, you used as cost of excavation on transmission lines five cents per foot of trench, did you not?

A. Yes, sir.

Q. That was the same figure that you used when you testified before the Railroad Commission?

A. Yes, sir.

Q. And that is estimated on the basis of the performance of a Buckeye No. 2 Trencher, isn't it?

A. No. 32?

Q. Buckeye No. 32 Trencher.

A. Just a moment; I will see. (Witness consults data.) Yes, sir, No. 32.

[fol. 1364] Q. Removing—well, cutting how many lineal feet of ditch per average day?

A. 3552.

Q. And how long a working day do you contemplate?

A. Ten hours.

Q. Ten hours?

A. Yes, sir.

Q. Have you figured in any cost of changing your crews on that trencher?

A. No, I haven't except in overhead cost.

Q. How much did you figure in in overhead cost?

A. Twenty-five per cent.

Q. Twenty-five per cent?

A. I figured in fifteen before.

Q. And that is, you figured out an average cost per foot of trench of 3-½ cents for that—per foot of ditch for that trencher, didn't you, for the machine excavation?

A. I figured 3.39.

Q. 3.39. Now, how much additional for mucking, hand-excavation, rough spots, trimming ditch, and so forth?

A. 25 per cent.

Q. 25 per cent?

A. Yes, sir.

Q. And what over-all figure does that give you?

A. That gives 4.23 per cent, and I have rounded it out to five, which would make——

Q. You have rounded it out to five?

[fol. 1365] A. Yes, which would make about 40 per cent for hand-trenching or for other work.

Q. Now, how did you compute your cost of hauling and stringing for transmission lines?

Mr. Bobbitt: Hauling and stringing transmission?

Mr. Coates: Yes, transmission line pipe.

A. That was figured on different bases for different places. For instance, on the Aguilares to Carolina-Tex if was 2.35 a ton.

Q. That is per ton or ton-mile?

A. 2.35—I will see in just a second. (Witness consults data). I will take it right straight through—Laredo to Target Range, is 4.9 miles, and the cost is 1.50, and between Target Range to Pescadito is 8.9 miles, that costs 1.60. Pescadito-Junction to Aguilares is 10-½ miles, and the cost is 1.65; Aguilares to Carolina-Tex Field is 12-½ miles, which comes to 2.35 a ton.

Q. Now, what type and character of truck did you base your estimate of performance on?

A. I used a 1-ton truck with an average speed of 16 miles per hour.

Q. Average speed of 16 miles per hour. Any particular make—Chevrolet, Ford, or what?

A. Well, I don't think that makes much difference. I hadn't given that any particular consideration.

[fol. 1366] Q. And did you figure in your gas and oil?

A. Yes.

Q. What price for gasoline?

A. Oh; I didn't figure any gas and oil; I figured a dollar an hour for the truck and driver. We are renting trucks and drivers on the work near Mathis for the City of Corpus Christi for 90 cents an hour.

Q. Now, in computing your price of pipe f. o. b. Laredo or f. o. b. delivery point, did you compute that price in carload lots?

A. Yes, sir.

Q. On the basis of quantity purchases?

A. Yes, sir.

Q. And under the latest quotations that have been given you by pipe manufacturers?

A. Yes, sir.

Q. And with respect to dresser couplings did you figure that on the basis of quantity purchases?

A. Yes, sir.

Q. And on the basis of delivering dresser couplings in carload lots?

A. Yes, sir.

Q. I believe you have previously testified, Mr. Elrod, that in making the appraisal of these properties you endeavored to reproduce the identical properties in the manner in which [fol. 1367] they were originally produced?

A. Yes, sir.

Q. Did you ascertain whether these trenchers—as this property was originally produced were cut with a No. 32 Buckeye Trencher?

A. No, sir.

Q. And did you find out whether any of them were hand excavation?

A. No, sir.

Q. Then to that extent you have varied from producing them in the manner in which they were originally produced, have you not?

A. No; that information was not available, and I had to use my best judgment as to——

Q. You had to use your best judgment?

A. Yes, sir.

Q. Well, do you know whether there were any Buckeye No. 32 models back in 1922?

A. I don't know whether there were any Buckeye 32's in '22.

Q. The modern type is more efficient than the old type, is it not?

A. Yes, I suspect it is. Most modern machinery is more efficient than older machinery.

Q. And did you ascertain whether all this pipe was hauled out to location, at the side of the ditch, with trucks, or some of it with mules and wagons?

[fol. 1368] A. No, I didn't. I suspect some of it was hauled by mules and wagons, but I have no way of knowing.

Q. And so you used or based your estimate on hauling it with modern type trucks?

A. Yes, sir.

Q. Did you ascertain whether, as these properties were originally produced, the pipe was all sent down in carload lots?

A. I had no way of ascertaining that information, of course.

Q. You get a lower price for pipe in carload lots, don't you?

A. Yes, sir.

Q. Did you ascertain whether the dresser couplings came in carload lots or l. c. l. lots—less than carload lots?

A. I had no way, of course, of ascertaining that information.

Q. And your freight rate on dresser couplings in carload lots is less than it would be in less than carload lots, is it not?

A. Yes, sir.

Q. Well, did you compute this cost of hauling on the basis of hauling over highways of the kind and character that existed when this property was originally produced?

A. No, I think my figures fairly represent the hauling regardless of how it was hauled.

Q. Then to that extent you have either been without knowledge or have varied from your concept of producing [fol. 1369] these properties as they were originally produced, did you not?

A. We have had to exercise the best judgment that we could in arriving at the prices for the various elements of property and the manner in which it was done. Where it

was possible to obtain information as to how the construction was originally done, that information was made use of; and where any bit of history could be utilized, it was utilized.

Q. But in respect to quantity purchases, hauling by trucks, cutting ditches by trenchers, and carload haulings, why, those all may have a lower price?

A. Yes.

Q. Turn, now, to page A of Plaintiffs' Exhibit 9. You show there on page A, at the top of it, Total Volume Gas M. C. F. 465,081. What volume of deliveries does that represent?

A. That is the total volume of deliveries to the Laredo area.

Q. Does that include the deliveries to the Laredo City Gate?

A. I should think it does. Those figures were given me by the Auditor.

Q. What did you ask him for, Mr. Elrod?

A. I asked him for just that—the total volumes of gas for the area outside of the city and the total volumes of gas delivered to the City Gate for use inside of the City.

Q. Well, did you mean to ask for total volumes of [fol. 1370] deliveries to all delivery points along the Carolina-Texas-Laredo line?

A. That is what I presumed I was getting.

Q. Well, that is what you asked for, wasn't it?

A. Yes, sir.

Q. And does that include deliveries at Aguilares?

A. I don't know whether it does or not. I have no detail of that.

Q. That is what you asked for, didn't you?

A. I have no detail of that. I made no special mention of deliveries at Aguilares.

Q. Does it include deliveries at Mirando City?

A. I don't think it includes those deliveries, but I don't know. I don't know the details of that. That information was furnished by the Auditor.

Q. Well, I know, but you had to ask him and make your request sufficiently specific so he would know what to give you, didn't you?

A. Yes, sir.

Q. And did you ask him for deliveries to all market points in what has been referred to here as the Laredo Sector?

A. That was my understanding.

Q. That was your understanding of what you got; and that is what you meant to get, is it not?

A. Yes, sir.

Q. And the delivery figures which would include deliv-
[fol. 1371] eries at Aguilares?

A. Well, as I say, I don't know.

Q. Well, is that what you intended to get from him?

A. I intended to get the figures from him that would represent the total volumes of gas that would be distributed by the transmission systems that would be allocated to Laredo, and that was the figures that was given me. Whether that included Aguilares or not I will just frankly state that I don't know, because I didn't have the detail of it.

Q. Well, is that——

A. Pardon me a second. Let me find the paper that was given me in connection with those figures. (Witness consults. data.)

Q. All right.

A. The total figure of 465,081 feet includes 630 M. C. F. to Aguilares; 2612 feet to Oilton; 12,037 feet to Mirando; 1396 feet to Rosenberg; and 901 feet to Cuellar; making a total of 465,000. There were 317,071 feet inside, and 130,434 feet outside.

Q. Now, in your appraisal marked Plaintiffs' Exhibit 9, you have excluded from consideration, and have not included in your appraisal, any valuation of the lines leading to Mirando City, Oilton, and the Misko Refinery, have you?

A. No, sir.

[fol. 1372] Q. But you have taken the volumes of gas to all these points, including deliveries at the Laredo City Gate, and used that as 100 per cent, have you not, in making your allocation factor?

A. Yes, sir.

Q. And do you know approximately what percent of this 465,000 M. C. F. the deliveries to Mirando City, Misko, and Oilton include? It is about four per cent, is it not?

A. I didn't figure it. If that is the right figure——

Q. Well, between three and a half and four per cent—is that what your memorandum shows, roughly?

A. 3.78.

Q. 3.78. Now, you understand the basis on which Mr. Greene proceeded in Defendant's Exhibit 9, do you not, with respect to allocations of these lines in here? (Indicating on map.)

A. I don't know whether I did or not. I don't know whether—I don't remember having heard his testimony on that.

Q. Well, to refresh your memory, didn't Mr. Greene include all this system in here (indicating on map) as one common inter-connected transmission system, and then apportion out a portion of all of it, based on the ratio of volume of deliveries to the City Gate to volume of deliveries at other points along the line?

[fol. 1373] A. Well, I just don't recall. If that was his testimony, why——

Q. Now, let me ask you this: by including in what you use for 100 per cent the volume of deliveries to Mirando City, Oilton, Misko Refinery, Aguilares and Pescadito, and then apportioning out the difference between 465,000 M. C. F. and the deliveries at the City Gate, haven't you apportioned a part of the line from Laredo to Pescadito Junction—at least 3.78 per cent of it—to these markets in here? (Indicating on map.)

A. Yes, I think so.

Q. Well, don't you know that is wrong?

A. I will have to think about that, Mr. Coates.

[fol. 1374] Q. Well, you did the same thing before the Commission, didn't you?

A. Yes.

Q. And you have had ever since then to think about it, haven't you, Mr. Elrod?

A. Well, I thought I was right then.

Q. Well, do you still think you are right?

A. I still think I'm right, yes.

Q. Then you do not think you have apportioned 3.78 per cent of the city gate line, that is the line from Pescadito to Laredo, to the markets, Aguilares, Mirando City, Misco Refinery and Oilton?

A. I will get you that; I will have to examine these figures a little more carefully to——

Q. You will have to get those figures?

A. I will analyze these figures.

Q. Well, will you do that over-night?

A. Yes.

Q. And if it does happen that you have apportioned a part of that city gate line—that is, the one from Pescadito to Laredo, to these markets, Aguilares, Mirando City, Oilton and Misco Refinery, don't you think your appraisal of the line from Pescadito to Laredo ought to be increased by 3.78 percent?

A. No, I do not.

Q. You don't?

A. No.

Q. Why not?

[fol. 1375] A. Well, I do not think that the fact that that gas is allocated out has anything to do with the allocation of the line as a whole—that is, the gas that passes through the line, it passes thru the line just the same, whether those lines from Aguilares Junction, Mirando City, Misco and Oilton are in there or not.

Q. I understand, and that dropped 3.78 percent of that volume off up there at Aguilares?

A. Yes.

Q. And that line then from Pescadito to Laredo, is used solely for serving gas to the Laredo city gate, is it not?

A. Yes.

Q. Then do you think any part of that line should be apportioned to Mirando City, Oilton and those other markets?

A. That is an involved question. I will answer it in the morning. I will analyze those figures.

Q. Well, can't you answer it now, Mr. Elrod?

Mr. Fitzhugh: Just an inquiry—Mr. Coates, do you mean the part of the Aguilares—Laredo line, in the way you framed your question there?

Mr. Coates: Well, the Pescadito-Laredo line; either Aguilares-Laredo or Pescadito-Laredo.

Mr. Fitzhugh: Well, the lines that go to Mirando City, Misco and Oilton are not included in here, are they?

Mr. Coates: No, but he has included the volumes of gas delivered to those markets in his 100 percent and then he has [fol. 1376] taken, or using that as 100 percent, he has taken the ratio between the city gate deliveries and that 100 percent, and apportioned only 68.18 percent of that line to Laredo, and in doing that, he has apportioned 3.78 percent of that line to those small markets, the four I named there.

Mr. Fitzhugh: Then I object to the question, if the Court please, because nothing is shown preliminary to the question about any lines that go to Mirando City and Oilton and these other towns, being included, and nothing to show that the delivery to Aguilares, as to the volume of the gas, does not preclude that consideration; the volumes of the gas delivered to Laredo would be just the same, whether——

The Court: Well, this is your witness, who has qualified as an expert and he is on cross examination; I overrule the objection. However, if the witness wants to have until the morning to answer the question, I will grant him that time. I will not insist upon his answering now.

Q. Do you prefer to wait until morning to answer that?

A. Yes, I prefer to wait until morning.

Q. All right. I have made some inquiry, Mr. Elrod, about your appraisal of the transmission lines. That is, you have given a breakdown of your unit costs—the breakdown of the unit costs that you gave on these transmission lines; that includes in units by foot of line costs of material and costs of installation, does it not?

A. Yes.

[fol. 1377] Q. And have you appraised the distribution mains in the same way; that is, by the application of unit costs derived in the same way?

A. Practically; there are some differences.

Q. And have you likewise made your appraisal of the telephone lines in the same way?

A. Practically; no, the telephone lines are appraised a little differently. Each item is appraised, priced out separately and the total is added and labor is added to that.

Q. But the figure that you show for transmission system property and distribution system property at the top of page B of Plaintiff's Exhibit 9, less lands of course, includes your appraisal of the direct structural costs—that is, the costs of material plus costs of installation?

A. Yes.

Q. And that includes meters and street service lines and so forth, does it not?

A. Yes.

Q. They were priced out in that same way weren't they?

A. Yes.

Q. And then you have added to these direct structural

costs there what you refer to, I believe, as undistributed or general overheads, have you not?

A. Yes.

Q. Which brings you down to the figure cost new, on page B of Plaintiff's Exhibit 9, before adding overheads, of the [fol. 1378] sum of $783,712.00, and cost new less depreciation of $596,524.00?

A. Yes.

Q. And the remainder of the additions, to get your totals over on page C are what you call your overheads or undistributed construction costs, materials and supplies and working cash, are they not?

A. Yes.

Q. Did I understand you to testify that you had included going value in Plaintiff's Exhibit 9?

A. I had not included it as a separate item.

Q. Have you included going value in the appraisal of these properties as shown by Plaintiff's Exhibit 9?

A. No, sir.

Q. You have not. Now, Mr. Elrod, when you went off the stand the other day, I believe you stated you had given transmission lines an average life of 33 years. Is that correct?

A. I do not recall that it was. We gave transmission lines—well, maybe it was.

Q. Well, don't you know? Three percent a year, wasn't it?

A. The ten inch O. D. pipe, on page 37 of the exhibit or section, was given an arbitrary percentage of 67 percent, or two-thirds new.

Q. Or two-thirds new?

A. Yes, because it was used pipe.

Q. And how did you know it was two-thirds new?

A. That was the result of conferences with Mr. Neff who [fol. 1379] had seen the pipe, and the statement that it had been used at Jasper, and my examination of pieces of the pipe that were left on the site where it was culled.

Q. Now, Mr. Elrod, I didn't mean to call for any hearsay testimony from you.

A. Mr. Neff is here and can testify.

Q. I asked you how you knew, and not what somebody told you about it and we move to strike out the witness' answer as not responsive.

The Court: I think it is responsive to the question you asked. It may be hearsay; but you asked him how he knew and he told you.

Mr. Coates: I was calling for his own personal knowledge with respect to the matter, and we move the answer be striken as not responsive and as hearsay.

Mr. Stout: We submit, if the Court please, as an expert he has the right to get his information any way he can.

The Court: I have tried to keep out hearsay, but where a lawyer cuts down and asks how he knows, and he tells you, I can't help that. I overrule the motion.

Mr. Coates: Note our exception.

Q. So somebody told you that was two-thirds new, did they?

A. No, that was arrived at as a result of our judgment in examining the condition of the pipe and the pieces of pipe that were culled and left on the site after the work was done.

Q. And was that a result of——

[fol. 1380] A. —and Mr. Neff, with whom I was working, saw the pipe during the processes of culling and reconditioning.

Q. And therefore you arrived at that judgment from looking at pipe that was not put in the line, that the pipe in the line was two-thirds new, did you?

A. Yes.

Q. And do you say that is just an arbitrary figure?

A. Yes, representing our best judgment as to the value of that pipe.

Q. I see. Now, what other lines did you give a 33 years average life—and I am talking about transmission lines now.

The Court: Gentlemen, I have decided I am wrong about my ruling while ago, and I now strike from the record what this witness says Mr. Neff told him about the pipe being dug up at Jasper, Texas, and you will not consider that at all.

A. Maybe I didn't *not* state that just clearly; Mr. Neff did not tell me the pipe was dug up at Jasper.

The Court: I understood you to state that.

A. I did not intend to state that, and if I did, it was mistaken and should be corrected; it was a statement made on the stand at the hearing at Laredo.

Q. Well, somebody told you, didn't they?

A. Yes, I say somebody told me—the statement was made on the stand by the company's witness, who is present.

Q. What witness?

A. Mr. Greene.

[fol. 1381] Q. I thought your statement the other day was that Mr. Laten Stanberry made that remark?

A. If I am mistaken, I do not mean to be.

Q. I am sure you did not, but we would like for you to be sure about your answer.

A. I am going to explain just what I did say. The question was asked about the pipe being second hand pipe or used pipe, and Mr. Stanberry asked the witness—and I am not quite sure whether it was Mr. Abernathy or Mr. Greene who was on the stand at the time—if that pipe did not come from Jasper, and the witness replied that it did.

Q. What about 1923?

A. That information came from another source.

Q. From another source?

A. Yes.

Q. Are you taking a part of the information from one source and part of the information from another source?

A. And a part from another source, and piecing it all together and arriving at my conclusion that the pipe, as used pipe, is two-thirds of its cost new.

Q. Didn't Mr. Abernathy say he knew this pipe was not purchased until 1927?

A. I do not recall.

Q. You have read the record in the last two or three days, have you not?

A. I don't recall that I have.

[fol. 1382] Q. Didn't I show you the place in the record where Mr. Abernathy so testified?

A. Yes, I believe you did.

Q. And didn't that state that that pipe was not purchased until 1927?

A. I just don't remember, but if it did, that is correct.

Q. But you have used part of that information, and have not used the rest of it, have you?

A. That's right. I used the information that it came from Jasper.

Q. But you did not use the part of the information that it was not bought until 1927?

A. Yes. And I believed that I was correct in doing it.

Q. So you figured that pipe was two-thirds new, did you?

A. Yes.

Q. All right; where else have you failed to use a 33 year life?

A. A section of eight inch pipe between Target Range and Pescadito, that was taken up and relaid in 1931, from pipe originally laid in 1910; that is the best of our information—and that too was given two-thirds value new, or 67 percent.

Q. All right?

A. All of the other sections, I believe, are given three percent straight depreciation.

Q. Now, this figure you show for that eight inch pipe between Target Range and Pescadito, referring to page 37 of Plaintiff's Exhibit 9, of 94 percent, when you consider all your deductions, that is really 61 percent of new, isn't it?

[fol. 1383] A. Well, it is 94 percent of 67 percent, and if that is 61 percent, that is correct.

Q. And in the same way with respect to the ten inch line, you first deduct 33 percent, and then you deduct six percent more, don't you?

A. Yes. That is, we give two years at 3 percent, or six per cent after the pipe had been reconditioned and placed in the ground

Q. Now, with respect to distribution mains, what age life did you use?

A. That was given two percent.

Q. That is, 50 year life on what mains?

A. On the pipe under pavement.

Q. What on pipe not under pavement?

A. On the black pipe, we gave it 45 percent condition, and the protected pipe, 72 percent condition—that is, the painted pipe; and the enameled and wrapped pipe, 85 per cent condition.

Q. What age life did you use?

A. We did not use any age life on it, because we did not know what the age life was.

Q. Now, when you came to bring your appraisal for 1932 down to 1933, on mains under paving, how much did you deduct?

A. We took off five percent.

Q. On mains under paving?

A. No, we took off three percent.

Q. Why did you change from two percent a year to three percent a year?

[fol. 1384] A. Well, we had a year and a half difference.

Q. You had a year and a half?

A. Yes.

Q. What span of months is that year and a half?

A. That was from July—it was seventeen months. July 31, 1932 to December 31, 1933.

Q. Did you inspect that pipe in July, 1932?

A. It was inspected prior to July, 1932.

Q. Prior to July, 1932. So that is really a year and a half?

A. Yes.

Q. Now, what did you take off on this pipe that was not under paving?

A. I think we took off five percent on the black pipe.

Q. What span of months does that cover?

A. That covers the same span of months.

Q. And what age life is that?

A. Well, I don't think we had any age life on it. I think that pipe was arrived at or the percent condition was arrived at by inspection and the use of a supposed or a guessed at age and life.

Q. All right; now did you use age-life to deduct this five percent to show 1933 over 1932?

A. I don't think we did. I think we just arbitrarily reduced the figures as they are shown.

Q. Just arbitrarily reduced them five percent for all mains not under paving?

[fol. 1385] A. Yes.

Q. But the three percent that you deducted from the mains under paving, that is two percent a year, for one and one-half years, is it?

A. Yes—or I won't say that—It was just three percent that we reduced the condition.

Q. And it had no relationship to the two percent a year that you deducted from those mains under paving, prior to that time, Mr. Elrod?

A. I don't believe it did. This part of the work, as testified to before, was done by Mr. Shaw.

Q. He was in your employ?

A. It was done under my supervision, of course, and in deciding on the rates to be used at this time, these rates

were decided on—that the eight inch pipe, two percent; that is, the eight inch pipe under pavement, two percent; and the six inch pipe, two percent, and four inch pipe two percent, and the pipe not under pavement, 45 percent for the black pipe, painted pipe 72 per cent, and the enameled and wrapped pipe, 85 percent.

Q. Were those the 1932 or the 1933 figures you are using?

A. 1933 figures.

Q. But the mathematical calculation gone through with, was to deduct five percent from the percent condition you gave for 1932?

A. From the pipe not under pavement, and that was [fol. 1386] based on the fact that the pipe not under pavement, the unprotected pipe, was going out in about twenty years. When I made inspections of the pipe early in 1932, we found pipe being removed from the system at that time that had been put in in 1910 or 1911.

Q. And so you got your twenty year age life period, at the rate of five per cent per annum, from that data; did you?

A. Yes. That is, in part.

Q. And the fifty year life for mains under paving, that is just arrived at on the basis of your best judgment?

A. And it was conditioned pipe. That is, it was well prepared, cleaned, painted and wrapped and it should have a life under pavement of fifty years.

Q. All right. Now, I believe you have stated that the life tables do contemplate all retirements on account of corrosion and physical deterioration, but do not contemplate retirements on account of inadequacy and casualties. Wasn't that your testimony?

A. Yes.

Q. Do these life tables contemplate retirements on account of requirements of governmental authorities?

A. Just what do you mean by that?

Q. Well, where you have a main on the highway, and they want to increase the width of the highway, you have to move your pipe over, don't you?

A. Yes.

Q. And where you have a main down the side of the [fol. 1387] street and they want to put down a storm sewer, you have to take up the main, don't you?

A. Yes.

Q. And where you have mains laid on an unpaved

street, and they put on a paving program, you have to lower your mains, do you not?

A. Yes, that is true.

Q. And that necessitates some retirements of property, usually, doesn't it?

A. Yes.

Q. And those are things, Mr. Elrod, that are commonly met with, are they not?

A. Yes.

Q. Now, does it contemplate retirements on account of changes in load centers?

A. No. The tables that I have used have contemplated the life of the pipe.

Q. That is, by life of the pipe, you mean the normal span of years from the average date of installation to the average date of retirement?

A. Yes.

Q. And that is retirements on account of corrosion and physical deterioration?

A. Yes.

Q. And they do not contemplate retirements of transmission lines on account of depletion of fields, do they?

[fol. 1388] A. No, sir.

Q. Nor by reason of the depletion of gas producing areas?

A. No, sir.

Q. Now, you have not worked out this percent condition for each joint of pipe, but have just applied a percent condition to each section of line of the same size, have you not?

A. Yes.

Q. Now, does ordinary maintenance tend to prolong the average span of years in service of a transmission line or of a distribution system main?

A. Yes, unless that maintenance is applied it is going to go out much quicker than the span of life given it in the table.

Q. And you have contemplated in your life tables—you have considered ordinary maintenance?

A. Yes.

Q. And that ordinary maintenance retards loss of value through physical deterioration and corrosion, doesn't it?

A. Yes.

Q. And it raises the percent condition, doesn't it?

A. Yes, but it can not forestall the ultimate end of the pipe, however.

Q. Now, does the reconditioning of a pipe line—that is, where you strip the line, take up the pipe, cut the welds, clean, sand-blast, cull, prime, coat and turn over the pipe and put it back in the ditch as a reconditioned job; does that offset loss in value of that line?

[fol. 1389] A. Not entirely.

Q. Does it tend to offset it?

A. Yes; of course any maintenance tends to offset the depreciation of the pipe.

Q. Do you consider that as ordinary, current maintenance—a reconditioning job?

A. I think a reconditioning job is deferred maintenance.

Q. And do you think it should be charged to operating expense? I am asking you as an engineer.

A. I do not think deferred maintenance, when it becomes of a considerable proportion, should be charged to operations. However, depreciation is an operating charge.

Q. Yes. Well, should it be charged to a reserve for depreciation, retirements and replacements?

A. When it amounts to a considerable item, as the replacement of any major element.

[fol. 1390] Q. Now, does the installation in the line of a substantial number of replacements, that is, new joints and stretches of pipe, raise its per cent condition?

A. Yes; it does. I will qualify that by saying that the installation of new joints in a line—that is, how much it will raise its condition depends on how well the pipe has been maintained, and how frequently it has to be done. For instance, I think, in this particular territory, or rather in Laredo, where the pipe laid is under discussion, that in certain parts of the country the soil is of such a corrosive nature, that this work of reconditioning and replacing and adding joints from time to time is almost a continuous process, or used to be, and the pipe will stand just so much of it.

Q. Has any protective coating been yet discovered by engineers that will protect the pipe against the attack of corrosive soil?

A. I think so.

Q. What is the name of that protective coating?

A. Well, I should qualify that statement. There are certain conditions of the soil perhaps that no protective coating could protect the pipe absolutely. The asphaltic protection—Barrett's Enamel perhaps will come nearer being a permanent protection.

Q. Is Barrett's Enamel an asphalt?

A. No, sir.

Q. But do you think Barrett's Enamel applied to steel [fol. 1391] pipe will protect that pipe against the attack of corrosion in the character of soil that you have in the hot spots around Laredo?

A. Not ultimately; that is, it won't be a complete protection to it.

Q. Now, a number of those lines are protected by Texaco asphalt, aren't they?

A. Yes, sir.

Q. That is a product put out by the Texas Company?

A. Yes, sir.

Q. Likewise protected by felt saturated with asphalt, isn't it?

A. Yes, sir.

Q. And is the asphaltic coating you were referring to?

A. Asphalt coating with felt protection.

Q. That is the coating that was on the Pescadito-Jennings line, wasn't it?

A. Yes, sir.

Q. Then, as I understand your testimony, there has been no protective coating yet devised that will permanently retard or prevent the attack of corrosion on the pipe from corrosive soils?

A. I think that is right. However, great advances have been made recently in the protection of pipe electrolytically, as well as mechanical means, coatings, and wrappings.

Q. Has that been put to the thorough test of experience?

A. Well, of course, the electrolytic system has not been invented long enough to tell; but from the principle of the [fol. 1392] thing, and the theories applied over several years, it looks as though it might be a permanent protection.

Q. Now, Mr. Elrod, doesn't the application of age-life tables, that is three per cent per year, based as it is on the average span of years from date of installation to date of retirement, taking into account current maintenance

only, ignore the extent to which your per cent condition has been raised by reconditioning jobs?

A. Yes.

Q. And the extent to which the per cent condition of these lines has been raised by the replacement of new joints of pipe?

A. Are you asking me the per cent condition it has been raised?

Q. No. I say, doesn't the application of the life table of 33 years, taking into account, as it does, the average span of years from date of installation to date of retirement, and taking into account only current maintenance to these lines here, ignore the extent to which the per cent condition of those lines has been raised by replacements of pipe in the line?

A. Yes. However, the examinations that were made of the pipe, in connection with the knowledge that we were able to obtain as to the date of installation, indicated that the pipe was in the condition that was given it.

Q. But in no instance have you varied except in respect to these lines where you took the 67 per cent condition [fol. 1393] arbitrarily—in no other instance have you varied from your application of three per cent per year, have you?

A. On the transmission lines?

Q. On the transmission lines.

A. No, sir.

Q. Do I understand it to be your testimony, then, that the replacements of joints of pipe in these lines have not raised the per cent condition above that to be found by the application of three per cent a year?

A. Well, I don't know what the company might do from now on out in replacements and reconditioning; but at the time of the investigation the conditions that were observed I think are fairly reflected by the percentages we have given them. We have to arrive at some percentage, just as the company's engineers arrived at the percentage condition of the pipe in the lines.

Q. Here is what I am directing your attention to: You said that this 33-year life or 3 per cent a year contemplated the average span of years in service, taking into account only current maintenance, didn't you?

A. Yes, sir. Now, if current maintenance becomes deferred maintenance—when deferred maintenance becomes

replacements and reconditioning, it amounts to the same thing.

Q. You say that amounts to the same thing?

A. Yes.

Q. And do you then say that this three per cent a year takes into account replacements of joints of pipe in the line?

[fol. 1394] A. It does, if the pipe line has been allowed to deteriorate during that period to the extent that it is necessary to replace a pipe. There may be two or three replacments in the pipe line, and yet the pipe line go out in thirty-three years.

Q. You mean replacement of two or three joints, or two or three reconditioning jobs?

A. That is, there might be two or three reconditioning jobs.

Q. In which a substantial amount of new pipe would be put in?

A. Placed in, and still the line go out.

Mr. Bobbitt: May we have a little recess?

The Court: Yes, sir; it is about time for one. We will take a short recess, gentlemen.

Recess.

Q. Then, do I understand it to be your testimony, Mr. Elrod, that in the case of these lines that have been reconditioned, why the application of the three per cent a year still reflects your judgment as to the present per cent condition of the line?

A. Yes, sir; for instance, a 10-inch line that has been muchly discussed, it was reconditioned, and our judgment was that it would last thirty-three years, and we depreciated at the rate of three per cent.

Q. Then, that means that these lines, with simply ordinary maintenance, and not with reconditioning jobs, [fol. 1395] will last much less than thirty-three years, doesn't it?

A. I think that they will not last in those hot spots thirty-three years without some reconditioning.

Q. And that reconditioning may have to be done as often as two or three times in a thirty-three year period?

A. It might be.

Q. And at each time a substantial number of new joints of pipe put in?

A. Possibly.

Q. Turn to page 40. Do you know whether the line from Pescadito to Aguilares, the 8-inch lines, has been reconditioned?

A. Pescadito to Aguilares?

Q. That is the stretch of 39,149 feet of 8-inch pipe.

A. No; I don't. I don't believe that it has been reconditioned; but I don't know that it has or has not.

Q. Should it happen that about thirty per cent of that line was reconditioned in 1931, then your figures don't show that the reconditioning of that line has raised its per cent condition any, does it?

A. No.

Q. As a matter of fact, has the per cent condition of that line been raised any by this reconditioning job?

A. I didn't examine it.

Q. You didn't examine that line?

A. No, sir; not since our previous——

Q. Well, you have examined it since 1931, haven't you?

[fol. 1396] A. I examined it in 1932.

Q. If a reconditioning job was done in 1931 you have examined it since that reconditioning job?

A. Yes, sir; I didn't understand you.

Q. Do I understand you to say that that reconditioning has not raised the per cent condition of that line?

A. The condition of that line was given as 67 per cent, or 70 per cent at that time, and that was our judgment as to the condition of the pipe.

Q. And that, even though there had been reconditioned thirty per cent of the line?

A. Yes, sir.

Q. And that indicates that line, with just ordinary maintenance and without reconditioning, would last in service much less than thirty-three years, wouldn't it?

A. Yes, sir; much of those lines have lasted much less than thirty years. If I may explain——

Q. Now, is there necessary any explanation of the answer to the question I have asked you?

A. This is an explanation of the answer to your question.

Q. Are you about to read from some book?

A. Yes, sir.

Q. Well, I have not asked you for that, Mr. Elrod.

Mr. Bobbitt: If an explanation is necessary to complete the answer, he should be allowed to give it.

Mr. Coates: I am asking him for his knowledge, and not [fol. 1397] what is in that book.

The Court: Go ahead.

Q. Now, in your study of this property, this line Pescadito to Jennings was built to serve Laredo, wasn't it?

A. Pescadito to Jennings?

Q. To Jennings.

A. Yes, sir.

Q. And was included in your 1932 appraisal, wasn't it?

A. Yes, sir.

Q. And was used to serve Laredo in 1932, wasn't it?

A. I believe that it was at once time.

Q. And was used to serve Laredo in 1933, wasn't it?

A. From my personal knowledge, I don't know.

Q. You don't know. Well, it was in service when you inspected it in 1934, wasn't it?

A. Yes, sir.

Q. And flowing gas in the direction of Laredo, wasn't it?

A. Yes, sir; and leaking very badly.

Q. Now, a good section of that line was reconditioned in 1933, wasn't it?

A. Yes, sir.

Q. And where on this map were those reconditioning jobs done? Do you know where Mile post Number 30 is on that map?

A. It is close to the Check Meter up there on the red line that runs in a northeasterly direction.

Mr. Bobbitt: You mean in a northwesterly direction?

[fol. 1398] A. In a northwesterly direction. I beg your pardon.

Q. That is there are thirty mile posts,—One down here, and Thirty up there?

A. Yes, sir; One is at the lower point, and Thirty is up at the top point (indicating on map). The reconditioning in the northerly end of the line started at, judging from the ditch, Mile Post 18, pole 7 plus 15 feet, and ended at Mile Post 21, pole 1 plus 165 feet.

Mr. Coates: Read me the answer, please.

(Thereupon the Reporter read the last preceding answer.)

Q. All right. Where was the other reconditioned section?

A. In the southerly end, starting at Mile post 10 pole 19, I believe, and ending at Mile Post 14 pole 27.

Q. That reconditioning was done in 1933, wasn't it?

A. I presume so.

Q. And the reconditioning job had been completed when you went over it in February, 1934?

A. Yes, sir.

Q. Refer to your notes, or Mr. Heins' notes, and relate the condition that you found in February, 1934. How many leaks did you find between Mile Post 1 and Mile Post 15 in 1934?

Mr. Bobbitt: You mean go over that report again?

Mr. Coates: No; I mean for him to do just what I am asking him,—how many leaks he found in 1934 between Mile Post 1 and Mile Post 15.

[fol. 1399] Mr. Bobbitt: I thought they gave that the other day.

Mr. Coates: No; he mixed up 1933 and 1932, in order to give an impressive picture.

Mr. Bobbitt: That is a statement by you and not by the witness, isn't it?

Mr. Coates: Yes, sir; I will ask the Court to instruct the jury not to consider it.

The Court: I have told the jury repeatedly that they are not to consider statements by the lawyers as testimony.

Q. Do you understand what I am asking you?

A. I understand, Mr. Coates. I had testified from some little sheets of paper that I had taken from my notebook, and I thought I had placed them back in my pocket, but I find I didn't do so, and I am having difficulty in finding them. No, here they are.

Q. Isn't it a fact, as reflected by your testimony——

Mr. Bobbitt: Has he answered that question?

Q. Strike that question. Isn't it a fact, Mr. Elrod, that when you went over the line in February, 1934, that from Mile Post 1 to Mile Post 15 you did not find existing in the line any leak clamps, or any leaks in the line, except the one to which you have arrived; that is, at Pole 18, Mile Post 8, you have a notation of bad condition?

A. That is at Mile 8 and pole 14.

[fol. 1400] Q. Pole 14?

A. Yes.

Q. What did that bad condition consist of?

A. Condition on 13 side of coupling, good; other side, bad.

Q. What do you mean "bad"?

A. Well, the pipe was badly pitted.

Q. Was it leaking?

A. I couldn't tell.

Q. Is that the only bad spot that your notes show between 1 and 15—between Mile Posts 1 and 15, when you made your inspection in 1934?

A. I think so.

Q. Now, I believe, to refresh your memory, that you said that you found, or did you find in February, 1916, any leak clamps between Poles 15 and 16?

Mr. Bobbitt: 1916, Mr. Coates?

Q. No; between Mile Post 15 and 16.

Mr. Bobbitt: You asked him about 1916.

Mr. Coates: I am getting my tongue twisted up. Strike the entire question.

Q. In your inspection in February, 1934, did you find any leak clamps or leaks in the line between Mile Post 15 and Mile Post 16?

A. Yes, sir; there was a clamp at Mile Post 16 pole 27.

Q. All right; is that the only place?

A. Yes; between those.

[fol. 1401] Q. Now, how about Mile Post 16 and Mile Post 17?

A. There is a clamp and leak in two holes in Mile 16 between poles 2 and 3.

Q. How about between Mile Post 18 and Mile Post 22—this is in 1934?

A. A leak at Dresser coupling on Mile 16 between Poles 14 and 15.

Q. That is back in Mile Post 16?

A. Yes, sir, Mile 16. Mile 17, in a hot spot, five joints of pipe replaced.

Q. Has new pipe been put back in the line?

A. I don't know whether new pipe or not.

Q. Was it leaking in February, 1934?

A. No, sir. I believe that is all I have.

Q. How about in February, 1934, between 18 and 21—Mile Posts 18 and 21?

A. Between 18 and 21, there were no leaks. It was where the reconditioning began.

Q. Did you find leak clamps between 21 and 22 in 1934?

A. At Mile 21 pole 18 plus 15 feet, leak clamp.

Q. How about between 22 and 23?

A. Mile 23 pole 5, leak clamp; pole 9, plus 100 feet, leak clamp; pole 16 plus 30 feet, leak clamp; pole 19, plus 100 feet, leak clamp; pole 21 plus 75 feet, leak clamp.

Q. All right. How about from 24 to 27—mile post 24 to 27?

A. Nothing between 24 and 27.

[fol. 1402] Q. Now, as a matter of fact, didn't you find in 1934 that by far the major portion of this long list of leak clamps that you read out were in the two miles from Pescadito Junction in a southerly direction?

A. You mean they were within two miles of Pescadito?

Q. Yes. I don't care for you to go through all that again.

A. Seven miles there was quite a number of them—one, two, three, four, five.

Q. That is at Mile——

A. Between 23 and 24. That is seven miles south.

Q. I have already asked you about that?

A. Yes.

Q. You have already told that?

A. Yes.

[fol. 1403] Q. But I am talking about in those last four miles here, were not the major portion of the leak clamps that you found there?

A. There were a good many of them, yes, sir.

Q. Well, what percent of the total that you read out?

A. I haven't figured that out; I have not made a list of them.

Q. Now, did you investigate to determine whether these two reconditioning jobs were done in a workmanlike manner or not?

A. They seemed to be.

Q. I believe you testified, Mr. Elrod, that you knew of no engineering reason why the city gate line going into Laredo should be tapered at the city gate end?

A. I don't believe I said that Mr. Coates, if you will pardon me. I said I think I could see no reason for a twelve inch pipe at that point.

Q. I see.

A. I can see a reason for it being tapered.

Q. I see. If in 1932 you found a piece of property that had not been maintained but in 1933 you found that same piece of property had had a maintenance and reconditioning job on it, would you raise the per cent condition?

A. It depends upon circumstances. This thing of depreciation maintenance is a very much involved one.

Q. In the first place, can you answer my question?

A. No, not without explaining it.

[fol. 1404] Q. Can you give a "yes" or "no" answer and then explain it?

A. No.

Q. Well, let me ask you this, then: this meter house at the Home Ice Company, when you inspected it in 1932, you found it in a state of disrepair and needing paint, did you not?

A. It not only needed paint but it needed reconstruction; it was rusted around the bottom of the galvanized iron and the wood-work was rusted considerably. I think we gave it 18 per cent condition at that time.

Q. All right. When you came in there in 1933, what did you find?

A. I found that it had been painted, but the rust and rot was still there; it had been covered with paint.

Q. Well, did that tend to retard the loss of surface value?

A. Yes, sir.

Q. What per cent condition did you give that meter house in 1933?

A. 13 per cent, and I think it is worth no more than that.

Q. Well, were you wrong in 1932 or in 1933?

A. No, I was right both times, I think.

Q. You were right both times?

A. Yes, sir.

Q. Didn't you say the reason why you did not raise the per cent condition of the meter house was that you thought the cost of reconditioning it had been charged to operating expenses?

[fol. 1405] A. I don't think I did; if I did, why, I don't recall it.

Q. Well, is that the reason why you depreciated it further in spite of the fact that it had been painted?

A. Well, reconditioning and painting and so on should be charged to maintenance and goes into operations. It should

not be then put back into capital account by giving it a higher condition.

Q. Well, what relationship has the way the cost of increasing the per cent condition of the property is accounted for got to the actual condition of the property—you are not an accountant, are you?

A. No.

Q. The purpose of your investigation is to determine the depreciation actually existing on the property, isn't it?

A. Yes, sir.

Q. And if the present condition of that property has been raised by a maintenance job, don't you think that less accrued depreciation exists in that piece of property.

A. That is a question that has given—that has been given a great deal of thought, and I have come to the conclusion after a good many years of experience that it is unfair to the public—that is, the people who pay rates—to pay for maintaining parts or elements of property and then increase—that is, giving it a rate of depreciation also then because it has been maintained, but that its average life has not been lengthened the higher value given it. I think that depreciation is largely a matter of accounting and when it comes——

[fol. 1406] Q. Well, is per cent condition a matter of accounting or a matter of accrued depreciation in the property reflecting that in the appraisal?

A. Yes, but I think it is necessary to do that.

Q. Well, don't you think where a piece of property has had its condition bettered by a maintenance job that it ought to have a higher per cent condition?

A. I just can't see it that way. I think that when it has two other operations——

Mr. Coates: Now, just a moment. If the Court please——

The Court: You answered the question when you said you could not see it that way. The rest is stricken.

Q. Now, as a matter of fact, Mr. Elrod, there were no special test holes dug to inspect the transmission line between Pescadito and Carolina-Tex?

A. Yes, sir.

Q. When?

A. In February of 1932.

Q. In February of 1932, under whose direction?

A. Mr. Heins, the city engineer, took his man, Marcus—I

don't know his other name—or rather sent them to prepare holes for us to inspect the pipe and they had prepared the holes when I arrived with Mr. Heins and we went over the line.

Q. How many of those holes were specially dug for inspection purposes between Pescadito and Carolina-Tex?

[fol. 1407] A. I don't know. You questioned me at length the last time I was on the stand and I told you I could not tell. I made no record of them. I was just trying to get at a general idea to support in my own mind the investigations that Mr. Neff had made previously or rather to see whether Mr. Neff was right or not—to check him up.

Q. As a matter of fact, didn't you testify before the Railroad Commission that no special test holes were dug between Pescadito and Carolina-Tex?

A. I don't remember that I did. I have got a note here in my book to the effect that on Thursday, the week of the 28th of February—that was in March—it was the third day of March——

Mr. Lange: What year?

A. 1932—that I was out over that line to Carolina-Tex with Mr. Heins.

Q. Didn't you testify before the Railroad Commission that only about seven out of twelve special test holes were dug on the complete Carolina-Tex to Laredo line, and those were all between Pescadito and Laredo?

A. I don't recall that I did. If I did, I subscribe to it.

Q. If you did, why you subscribe to it?

A. Yes, sir.

Q. Your recollection then——

A. Was better then than now.

Q. Was better then than it is now?

A. Yes, sir.

[fol. 1408] Q. Now, at the time you were inspecting these lines in 1932, there had been quite a flood in the Laredo area, had there not?

A. I don't recall. Yes, there had been—yes, there had been.

Q. And you inspected these lines at a good many points in the low spots where the running water had exposed the line, didn't you?

A. Just pardon me a second until I get that (witness refers to memorandum book). I was in Laredo in Septem-

ber, 1932. I don't think I made any inspection at the time of the flood, which seemed to me—do you know what period of the year those floods were—were they around July?

Q. No, I don't. All I know is that it washed out a bridge.

Mr. Coates: When was it, do you know?

Mr. Lange: I think it was in September.

A. I didn't make any inspection at that time of the transmission line.

Q. You didn't?

A. No, sir.

The Court: What time do you refer to when you say you did not make an inspection?

A. It was in September, '32.

Q. Well, did you make any subsequent to that time?

A. They have all been made subsequent to that time.

Q. Subsequent to September, 1932?

A. Yes, sir.

[fol. 1409] Q. And do you recall that the line had been exposed in a good many points by running water in low spots?

A. Not recent running water. The line was exposed from place to place by erosion, dry arroyos, and for various and sundry other reasons, such as holes having been dug along them.

Q. Well, I am asking you about exposure from flood waters. Now, at those low points where there had been erosion and exposure of the line you made inspections and worked all that into your present condition, did you?

A. Well, that of course had a bearing on the general concept that I got of the line. I did not make a percentage study—that is I did not go to a pipe and say—or to a place and say "the percentage here is so much" or "the percentage here is so much," and then add those up and strike an average. I just went over the line and got just general information, a mind full of what I saw, and used my best judgment as to arriving at what the per cent consition should be given that pipe in view of its age and the soil it was in and so forth.

Q. But with the two inspections that you have named, you put down 67 per cent. That always worked out mathematically three times the number of years since the line was first installed, didn't it?

A. Yes, sir.

Q. That is the way it worked out mathematically, wasn't it, Mr. Elrod?

A. Yes, that is the way it worked out mathematically.

[fol. 1410] Q. Now, do you use "working cash" to mean working capital?

A. Yes, sir.

Q. Do you subscribe to the proposition that the amount of working capital included in an engineering appraisal of property of this sort should equal in amount the amount of free capital used in a business and actually employed in the business by the managing officials?

A. I subscribe to the proposition that one-eighth of the total operating expenses, less gas purchases, as in the case of purchases made from an affiliated company or from themselves is sufficient as being a rather good allowance—I beg your pardon—provision.

Q. Do I take your answer to mean that you do not subscribe to the proposition I have outlined to you?

A. I do not subscribe to it.

Q. And do you subscribe to the proposition that the amount of working capital in an engineering appraisal of this sort should be the amount of free cash capital held in the business and used and employed in it by the managing officials and not available for investments and earning a return in other ventures?

[fol. 1411] A. No, unless that amount happens to be an eighth of the forty-five days.

Q. Unless it happens to be an eighth of the operating expenses?

A. Forty-five days of the operating expenses, in other words; I think that is enough.

Q. Now, do you take into account in computing cash working capital any minimum bank balances kept on hand by the Company?

A. No, I think that is a matter that is purely arbitrary with them.

Q. Purely arbitrary, or purely discretionary?

A. Discretionary is better, yes. I thank you.

Q. And even if they, in their judgment, in the management of this property feel it necessary to keep on hand for the use of the property a minimum bank balance, then you don't think that it ought to be taken into account in computing working capital?

A. No, I think Consulting Engineers performing the duties that I have been called upon to perform here have to have some rule that is backed up by experience or what has been provided in other cases, to guide them, and take that as the guide.

Q. You mean some formula like this forty-five days operating——

A. Yes, I think that is rather generally used, and I think [fol. 1412] from a study of the situation that it is sufficient, and that is why I have used it.

Q. Well, now what study of the situation have you made?

A. Well, the Company has to pay its employes, I presume, and has to take care of the ordinary expenses from month to month, and the average expense for a year—or rather for a month is a twelfth of that for the year, and if you will allow them a fifteen day leeway for such things as delayed payments, and so on, that that is sufficient—that is, the total operating expenses for the month, which is a twelfth of the year, plus fifteen days additional, seems to me, from the standpoint of engineering judgment should be enough; and that is the amount I have allowed, and that is the way I have gotten at it.

Q. Do you take into account prepaid items?

A. No, sir.

Q. Neither prepaid items nor minimum bank balances actually kept on hand by the Company?

A. No, sir.

Q. Do you take into account the amount of accounts receivable?

A. Only as reflected by revenues. If there were not sufficient revenues to pay operating expenses, I would be inclined to allow them more working capital.

Q. That is, if they were not sufficient to pay operating expenses, then you would allow more working capital?

[fol. 1413] A. Yes, sir.

Q. Well, now, before the Railroad Commission you thought that at least sixty days operating expenses ought to be allowed on account of the practice of this Company, of continuous meter reading?

A. Yes.

Q. Do you know whether continuous meter reading is still in effect in Laredo?

A. I think it is; I have no reason to think it is not. But I have changed my mind about the sixty days.

Q. You have changed your mind in the last year about the sixty days?

A. Yes, sir.

Q. But not about the continuous meter reading?

A. No, sir, I think the matter of continuous meter reading is rather generally established among gas companies and other utilities. I just have taken it for granted that they are continuing in that.

Q. Now, you have said, I believe, that you have had no experience in operating a property of this sort?

A. No, not of natural gas.

Q. And do you know of your own personal knowledge of any company of this character which keeps its cash paid out down to the point where it has got no more cash on hand after it meets its monthly payroll than an additional fifteen days of operating expenses?

[fol. 1414] The Witness: Will you read that question to me, please, Mr. Reporter?

(Thereupon the Reporter read the last preceding question, as follows: "Q. And do you know of your own personal knowledge of any company of this character which keeps its cash paid out down to the point where it has got no more cash on hand after it meets its monthly payroll than an additional fifteen days of operating expenses?")

A. No, I don't.

Q. You say you don't know of any such company?

A. I don't know of any such company.

Q. Well, as a matter of fact, do you know about the operating practices of gas utilities in that respect?

A. I do not; I am not familiar with the——

Q. And do you know——

Mr. Bobbitt: What is that?

Mr. Coates: Did I interrupt?

Mr. Bobbitt: You started another question while he was still answering.

Mr. Coates: All right.

A. I testified originally, I believe, that I had never had any experience with the operation of a gas company, and I haven't had any occasion to go into the operations of this company.

Q. And don't you think that the best measure of the amount of cash working capital required is the amount of [fol. 1415] cash working capital which the officer of the company in its operation feel is actually needed and required to be held on hand in the business?

A. Well, I don't know; there might be exceptions to that, where the company would, inasmuch as the working cash is an addition to the amount upon which they are entitled to earn a return, might through that element that is more or less predominant in human beings—greed—might induce them to want a little bit more than was actually necessary for them to have. Now, I am not implying that your company would do that; but I have thought that if they were limited to a month and a half's operations that they ought to be able to get along. And that is the theory that I have operated under, and that is the reason that I have allowed this much; and if it is wrong, I am wrong.

Q. If they hold it in the business—that is, if they hold an amount of money there in the business—a reservoir of cash, of cash working capital, then that money being held in the business is not available for earning a return elsewhere, is it?

A. Well, the amount that is provided in an estimate such as this for working cash is added to the structural costs and structural overheads as part of the sum upon which the company is entitled to earn and the rates are based, and as I [fol. 1416] said, presuming——

Q. I don't believe you understood my question, Mr. Elrod.

Mr. Coates: Will you read it, Mr. Reporter?

(Thereupon the Reporter read the last preceding question, as follows: "Q. If they hold it in the business—that is, if they hold an amount of money there in the business—a reservoir of cash, of cash working capital, then that money being held in the business is not available for earning a return elsewhere, is it?")

A. No, and I——

Mr. Bobbitt: What is your answer? I say go ahead and answer it.

A. I was going to add that——

Q. Well, now, have you answered the question, or——

A. I have answered your question; that is why I stopped.

But I intended to add a little gratuitous testimony and decided I wouldn't.

The Court: Mr. Coates, the witness states that he feels very ill. So we will stop here. Can you finish with him this afternoon if we let him rest a little, or had we better recess?

Mr. Coates: I believe we had better recess.

The Court: We will recess until nine o'clock in the morning, gentlemen.

[fol. 1417] The Witness: Thank you, sir.

(Thereupon, at 4:55 o'clock p. m., a recess was taken until 9:00 o'clock a. m., Tuesday, March 26, 1934.)

[fol. 1418] Tuesday, March 27, 1934

Morning Session, 9:00 a. m.

Henry E. Elrod, a witness for Plaintiffs' resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Coates:

Q. Mr. Elrod, during the time since you have been on the stand have you determined whether you apportioned 3.78 per cent on the line from Pescadito to Laredo to these markets, Mirando City, Oilton, and so forth?

A. I did apportion that part out. I think, however, after my attention has been called to the situation on the stand yesterday afternoon, that it would be proper to apply that proportion to that portion of the line from Aguilares Junction which is used on the map as being 13.5 miles.

Q. And to increase your valuation of the transmission lines from Laredo to Aguilares by 3.78 per cent?

A. Oh, I don't know that it would be just exactly that. I will make the calculations and present them. I was just too sick to do it last night.

Q. But you will make those calculations?

A. I think the company is entitled to that—to have that changed.

[fol. 1419] Q. And at the same time can you make the calculations which would show the amount by which your valuation would be increased?

A. I will make a supplemental sheet carrying that through.

Q. Well, on that supplemental sheet will you likewise calculate the amount by which your valuation would be increased if you had used the Workmen's Compensation rate of $6.18 instead of the one that you used?

A. I will make a promise—well, I will make the proper adjustment; I will make the calculation to show the proper adjustment.

Q. Well, will you make it to show the Workmen's Compensation rate of $6.18 instead of the two dollars and something that you used?

A. As it is properly applied, yes, I will make the calculation.

Q. Well, I am asking you will you make the calculation to show that on that sheet, Mr. Elrod?

A. I will show on the sheet what is necessary to be shown to make the correction for the failure to have used the proper figure, and I will have to look at my work sheets and find just what I did use.

Q. And will you likewise show the increase which would result if you used five per cent for engineering?

A. I can make a calculation as to what it would be, but I don't believe that I would be willing to allow the increase.

Q. You would be willing to make the calculation, wouldn't you?

[fol. 1420] A. Yes, sir.

The Court: I understand that is all you are asking him to do, is to make the calculations like you want them made?

Mr. Coates: Yes. I am not asking him to subscribe to it.

The Court: I want the witness to understand what is wanted.

Mr. Bobbitt: I don't know how much calculating the company's attorney wants the witness to make to establish their theories.

The Court: They are telling him now, Mr. Bobbitt, what they want.

Mr. Bobbitt: Well, I don't know how much work it will entail.

The Court: Well, if it is too much he won't have it to do.

Q. Now, the volume of gas that you used in apportioning this transmission likewise includes approximately twenty-

seven million feet of gas that came up from Jennings, does it not?

A. I just don't know the detail.

Q. Mr. Elrod, didn't you ascertain what was in these figures that you employed in your apportionment factors?

A. Yes, sir. Those figures were given me by the Auditor. I have them here.

Q. Well, I know, but after you got them didn't you find [fol. 1421] out what was in them?

A. I will read you, if you please, the figures that I have upon which I base my values.

Q. Now, those are the same figures you read to me yesterday?

A. Yes, sir.

Q. And do they show whether the twenty-seven million feet of gas from the Jennings field in 1933 is included in those figures or not?

A. No, sir; they do not.

Q. Do you have any way of knowing?

A. No, sir.

Q. Do these figures purport to show in the same way 465,000 M. C. F., the total volume of gas delivered during 1933 in the Laredo sector?

A. I think they do, but the source does not show.

Q. So that if the figure of 465,000 M. C. F. does include the gas which came up from Jennings during that period you don't know how you handled that in your apportionment factors, do you?

A. I paid no attention to it.

Q. Paid no attention to it?

A. That is, I didn't have any such figure.

Q. Now, did you include in Plaintiff's Exhibit 9 the Carolina-Tex. gathering system?

A. No, sir.

Q. And you didn't include the Jennings-Pescadito line?

[fol. 1422] A. No.

Q. Nor any gathering lines in the West Jennings field?

A. No, sir.

Q. Does Plaintiffs' Exhibit No. 9 purport to constitute an appraisal of the property used to serve Laredo?

A. Used and necessary to be used to serve Laredo.

Q. Used and necessary to serve, but it does not purport to constitute an appraisal of all the property used to serve Laredo during 1933?

A. No.

Q. And if they did not have that gathering system over in the Carolina-Tex. field how would the gas get over to the transmission line?—it couldn't jump over there?

A. No, it could not get there unless the gathering system were there.

Q. And in the same way there is no way known to science by which gas could jump up from the Jennings field to Pescadito Junction?

A. No. I readily admit that the gathering lines are necessary.

Mr. Coates: I believe that is all, Mr. Elrod.

Redirect examination

Questions by Mr. Lange:

Q. Mr. Elrod, in your Cross Examination yesterday you were asked whether or not you had included going value as a separate item in computing your Exhibit 9?

[fol. 1423] A. Yes, sir.

Q. You said you did not. I will ask you whether or not you gave the item going value any consideration in the preparation of that exhibit?

A. Yes. I believe I testified previously that I had considered it in the appraisal; I had appraised the property as a going entity as against properties—that is, a going entity established and with a business attached as against one not so advanced—that is, one that was not established and didn't have a business connected.

Q. Now, I will ask you whether or not in giving that item consideration you took into consideration the amount of structural overheads allowed or provided for?

A. Yes. When they were taken care of, that took care of the expense preliminary to operations.

Q. Mr. Elrod, in the light of your experience, viewing the history of the company, what, in your opinion, would be a sufficient amount to be set aside for annual depreciation of these properties?

Mr. Coates: To which we object for all the reasons for which we objected to the witness' qualifications in the first place at the time Plaintiff's Exhibit 9 was introduced.

The Court: Isn't this repetition?

Mr. Lange: No, sir.

The Court: Hasn't he prepared an exhibit which shows that?

[fol. 1424] Mr. Lange: No, sir.

The Court: I thought he had.

Mr. Lange: No, there has been no exhibit on that.

Mr. Coates: But our objection goes to his qualifications.

The Court: Read the question, Mr. Reporter.

(Thereupon the Reporter read as follows: "Q. Mr. Elrod, in the light of your experience, viewing the history of the company, what, in your opinion, would be a sufficient amount to be set aside for annual depreciation of these properties?")

The Court. I don't think the question is qualified sufficiently.

Mr. Lange: I will withdraw that question.

Q. Mr. Elrod, you have made an appraisal of these properties?

A. Yes.

Q. Set forth in your Exhibit 9?

A. Yes, sir.

Q. In connection with the making of that appraisal you have inspected the properties?

A. Yes, sir.

Q. And further in connection with the making of that appraisal you also studied the history of the properties?

A. Yes, sir.

Q. And in compiling this appraisal of the properties did you have occasion to look into the future needs of the property as to the requirements for future depreciation?

A. Yes, I had occasion to make a study of depreciation [fol. 1425] as connected with these particular properties prior to the Railroad Commission hearing and to study the accounting records in connection with depreciation and to arrive at a conclusion at that time, based on my engineering experience, as to what amount of depreciation would be necessary for the future—that is, what annual allowance, or provision, rather, should be made for future depreciation.

Q. Have you arrived at an opinion, and what in your opinion is a proper and necessary allowance for future annual depreciation?

Mr. Coates: We renew our objection, if the Court please, the same objection which we made to his qualifications and to his testimony at the time Plaintiffs' Exhibit No. 9 was introduced, which went to his qualifications likewise and the findings of the Railroad Commission and stated numerous grounds.

The Court: Does the witness say he based it on all the things that he has undertaken?

Mr. Lange: Yes, sir.

The Court: I overrule the objection.

Mr. Coates: Note the exception.

A. My opinion at that time was that two per cent was adequate. I think that a maximum of three per cent, or rather an amount not in excess of three per cent should be provided.

Q. That is your opinion at this time?

A. Yes.

[fol. 1426] The Court: I want to know, three per cent of what?

A. Three per cent of the appraised costs of the properties.

The Court: As you appraised it or as somebody else appraised it?

A. As may be fixed or as was fixed by appraisal.

The Court: Whose appraisal? I want you to say whether yours or Mr. Greene's or somebody else's.

A. The Railroad Commission, I believe, established a base and from that base we have taken away some of the properties that were included at that time and have made a new base or found a new value, and it is upon that new value that I would base my rate of return.

Mr. Coates: Reproduction cost new, or reproduction cost new less depreciation?

A. Cost new.

Q. I will ask you as set forth in your appraisal?

Mr. Coates: We object.

The Court: Are you objecting to the Court's inquiry?

Mr. Coates: No, sir.

The Court: You have a right to.

Mr. Coates: I know, but I am not.

The Court: I wanted to get the record clear on that.

A. Did you ask me a question?

[fol. 1427] The Court: No.

A. Is there a question before me at this time?

The Court: Will you all pardon me? Leave it out of the record if you want to. I am confused. Your maximum of three per cent that you would allow for depreciation is based on a figure found by you, I understand now?

A. Yes, sir.

The Court: Since the fair value of the property was fixed by the Railroad Commission in their hearing?

A. Yes, sir.

The Court: Now, where is the figure of fair value as found by you in the evidence?

Mr. Lange: I will ask the witness to refer to his Exhibit 9.

A. That is given on page C of Exhibit 9.

Mr. Coates: What figure?

A. The total cost new of the depreciable property. From that, of course, would have to be deducted land, which does not depreciate, and rights of way, which do not depreciate, and materials and supplies and other such working cash.

The Court: Now, is there any objection by anybody to what I asked?

Mr. Coates: No. We invite the Court to ask any questions he desires.

[fol. 1428] A. If I may make a little further explanation——

The Court: All right.

Mr. Coates: Of course, we are objecting—I mean our objection to the witness' qualification is not to be taken as having been waived. We do not object to the Court's asking the witness questions.

The Court: In order that there may be no misunderstanding, I am not trying to conduct the case, but I want to know what he is talking about, so I will get his testimony.

A. The object of depreciation, or provision for annual reserve to take care of depreciation, which is the loss of anything by a practical means, as rot, rust, and so on, is to maintain the integrity of the original investment. If the original investment is arrived at as being the figure that I have just quoted, less items that do not depreciate, then the per cent that is provided only bears upon that figure to provide a fund that will restore the items of property in

that original figure, as they go out of existence, at their original cost.

The Court: Now, may I see the attorneys here a moment?

(Thereupon counsel for plaintiffs and defendant conferred with the Court, out of hearing of the jury.)

The Court: Mr. Elrod, will you read into the record the figure you are talking about shown there in your exhibit on [fol. 1429] which you calculate the three per cent you are talking about? Read that exact figure.

A. The exact figure is $891,616.00, less working cash, materials and supplies.

The Court: Well, state it exactly; I mean exactly the net figure.

A. I haven't the exact net figure. I can calculate it.

The Court: Well, that is really what I would like to know.

A. Maybe I have it here.

The Court: I want to get that exact figure.

Mr. Coates: I believe it would be worth while at this time to give the witness there or four or five minutes to get that.

The Court: All right. I could calculate it, but I believe it would be better to let him calculate it.

(Recess.)

[fol. 1430] The Court: Now, Mr. Elrod, have you located that exact net figure you were asked for, and you said you would make the calculation on?

A. Yes, the net depreciation base is $829,559. It must be borne in mind, however, that there are corrections to be made in that, and that the three per cent maximum rate of depreciation must apply on any figure that is fixed by this Court or in this court.

The Court: We are not talking about that. We are talking about what you did.

A. Yes.

The Court: That is the exact figure you found?

A. That is the exact figure I found.

The Court: All right, gentlemen, that is all I wanted.

A. That is subject to the corrections I have agreed to make.

The Court: Go ahead, gentlemen.

Questions by Mr. Lange:

Q. In connection with the preparation of this appraisal and your study of the history of this company and its properties and its financial history, I will ask you whether you had occasion to look into the financial needs of this company in the past, and what in your opinion would be the financial needs of this company in the future as a fair rate of return on its properties as you computed them in this [fol. 1431] appraisal?

Mr. Coates: The same objection, if the Court please,—and no proper predicate laid showing that this witness has ever operated any such properties, that he has ever engaged in any activities which would show his familiarity with the rate of return required to produce a free flow of capital to maintain the credit of the company and enable it to secure the money to properly exercise its public duty; and because no proper predicate has been laid, and he is not shown to be qualified.

The Court: Gentlemen of the Jury, will you pass on into the jury-room.

(Jury is retired.)

Mr. Coates: And the same objection and each and all of the grounds thereof which the defendant made to the introduction of Plaintiffs' Exhibit 9, which objections are here adopted and leveled at this testimony—the question of counsel and the answer of the witness sought to be elicited.

The Court: Mr. Reporter, read the question which Mr. Lange asked just before the jury was retired.

(Thereupon the Reporter read the last preceding question, as follows: "Q. In connection with the preparation of this appraisal and your study of the history of this company and its properties and its financial history, I will ask you whether you had occasion to look into the financial needs of [fol. 1432] this company in the past, and what in your opinion would be the financial needs of this company in the future as a fair rate of return on its properties as you computed them in this appraisal?")

The Court: Don't take this for the record, Mr. Reporter.

(Discussion off the record.)

The Court: This is admissible on rebuttal.

Mr. Coates: We are objecting to the qualification of the witness.

The Court: Bring the jury back.

Mr. Coates: The objection is overruled?

The Court: Yes, sir.

Mr. Coates: Note our exception.

The Court: Yes, sir.

(The jury was thereupon returned to the jury box.)

Mr. Lange: Read the question, please, Mr. Reporter.

(Thereupon the Reporter read the last preceding question, as follows: "Q. In connection with the preparation of this appraisal and your study of the history of this company and its properties and its financial history, I will ask you whether you had occasion to look into the financial needs of this company in the past, and what in your opinion would be the financial needs of this company in the future as a fair rate of return on its properties as you computed them in this appraisal?")

[fol. 1433] Mr. Coates: Our objections go to all this line of testimony, without the necessity of repeating them.

The Court: Yes; all right.

A. I believe I testified in the Railroad Commission hearing——

The Court: Just testify here.

A. I believe that seven per cent on the value of the properties as found by me is an adequate return for the company.

Q. That is before the allowance for depreciation?

A. That is before, and does not include the allowance for depreciation,—the allowance for depreciation to be in addition to the seven per cent.

Q. And is, as you testified, in your opinion, three per cent?

A. Yes, or a total of three per cent.

Q. Or a maximum of three?

A. I think that is a high figure.

Q. Or a total of the two of ten per cent?

A. Yes.

Q. As a maximum figure?

A. Yes.

Mr. Lange: That is all.
The Court: Any questions, Mr. Coates?
Mr. Coates: Yes, sir.

[fol. 1434] Recross-examination.

Questions by Mr. Coates:

Q. Seven per cent of what, Mr. Elrod?

The Court: I believe he answered that a while ago. He said it was of the fair valuation as found by him.

Q. Well, what is the fair valuation found by you?

The Court: That is all right.

A. $690,261.00, which is the depreciated value of the properties as of December 31, 1933, as found by me.

Q. Now, can you compute the total requirements for depreciation reserve and return as estimated by you—the total annual requirements?

A. I haven't done so. I will.

Q. Can you?

The Court: Just a minute, Gentlemen. Gentlemen of the Jury, I am going to retire you for just a moment again.

(Thereupon the jury was retired.)

The Court: Now, I want to get my own mind clear about this, and I am not complaining of the lawyers on either side; I am complaining about myself. I don't understand, Mr. Elrod, why you compute the three per cent on $829,559.00 and why seven per cent on $690,261.00?

[fol. 1435] The Witness: Well, I can readily understand your confusion.

The Court: Yes, sir, that is what I want to get at. I am confused about it.

Mr. Lange: Yes, sir, we want the Court to understand it.

The Witness: This matter of depreciation is a very deep one, and there are very few people, according to my opinion, that do really understand all there is to know about it; but if you have a utility and it cost you so much money, say, a million dollars, and you know that the utility is going to depreciate in twenty years—that is, the life of the utility is twenty years—of course, utilities go right on and on and on, but there are elements of property that are replaced from time to time, and you find the average life of the property,

and we set up five per cent—if it is twenty years we set up the five per cent rate of depreciation to restore the cost new of the property as it goes out of existence; in other words, any item of property which goes out of use through wear and tear and rust, or obsolescence, or what not, this fund of five per cent is available to replace that item. If it costs more than the five per cent, why, the additional amount is charged to capital account, the balance is charged from the [fol. 1436] depreciation fund. The properties should be always worth the difference of cost new and the depreciated cost, and there should be in the reserve a fund that equals the balance. The rate of return is applied upon the depreciated balance, because the company has the depreciation reserve to use as it pleases; they may use it in the plant to restore or improve, or what not, or they may invest it in other properties,—just so that the values set up may be available for keeping intact the original property; and as the properties depreciate and as new elements are added to take the place of depreciated properties, there will be a balance struck finally which will be fairly even throughout the rest of the history of the plant, replaced items being offset by replacing items; and there should not be much, if any, change annually in the rate base—that is, in the base—the depreciated base upon which a return may be computed.

Mr. Lange: What the Court particularly directed your attention to is that you use the one figure for the three per cent depreciation, and the other for the seven per cent. The Court didn't have that clearly in mind.

The Witness: Yes. Well, I was trying to explain that the depreciation rate or the rate to provide an annual reserve for maintaining the integrity of the investment in the prop- [fol. 1437] erty was applicable to the original cost of the property, while the base for the yearly rate of return is applicable upon the depreciated properties or the difference between the cost new and the depreciation reserve.

The Court: I understand thoroughly now what he says his reasons are; whether I agree with him or not is immaterial; but I did want to get his reasons, and why he was doing that.

Mr. Lange: Yes, does the Court get the reasons, now?

The Court: I have got his reasons.

Mr. Lange: That is what I mean, yes.

The Court: Bring in the jury.

(The jury was thereupon returned to the jury-box.)

[fol. 1438] Q. Mr. Elrod, in accordance with your testimony as to rates of return and reserve accrual, what would be, according to your testimony and in your opinion, the total annual requirements for reserve accruals and return?

A. On the bases that have just been quoted, without adjustments that have been asked for, it will amount to $73,205.00.

Q. And with the corrections that you have been asked to make it will amount to some more than that, will it not?

A. Presumably.

Q. Well, presumably—you are going to add more value to that transmission line, aren't you?

A. Yes.

Q. And you are going to compute three per cent on that, aren't you?

A. I think so.

Q. Well, don't you know whether you will or not?

A. I am going to figure whatever those figures are.

The Court: Let's just wait until he gets his figures up on that, gentlemen; that is just in order to save time.

Q. All right.

A. If you will pardon me, I would like to just state that I am not quoting these figures, because I could not burden my mind with all the figures in the report, and when Mr. Coates asks me if it is such and such a thing, I can not say definitely it is that amount, until I have the paper before me from which I can read.

Q. All right, sir. Mr. Elrod, yesterday you were asked the [fol. 1439] following questions, and didn't you give the following answer: "Q. Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir." Was that your testimony yesterday?

A. Will you read me the question preceding that one?

Q. Yes. "Question: Do I understand you to testify that you had included going value in Plaintiff's Exhibit 9? Answer: I have not included it as a separate item. Question: Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir."

A. Well, I misunderstood your question, and what I intended to convey was that I had not included it as a separate item in that appraisal.

Q. Well, where is it? Point it out in Exhibit No. 9—what page does it appear on?

A. It does not appear on any page and does not appear except as an intangible thing, connected with and indistinguishable from the properties, and is the value in a utility that comes from the fact that the utility is established and is going and has business connected, as against a similar property that is not so advanced.

Q. How much is it?

A. I have not arrived at any figure for it.

Q. Do you know whether it is One Dollar?

A. No.

Q. Do you know whether it is Fifty Cents?

[fol. 1440] A. No.

Q. Well, do you know whether it is more than fifty cents?

A. No, I have not arrived at any value for it.

Q. Have you appraised it?

A. No, not except——

Q. Well, how do you know it is there, if you have not appraised it?

Mr. Bobbitt: The witness had not finished answering the question.

The Court: I think it answered it and started to volunteer some information. If Yes, or No means an answer, then he has answered it.

Mr. Lange: In connection with the answer, he was qualifying his answer. Except—He said "excepting."

The Court: All right, read what he said, Mr. Reporter.

(Reporter reads answer: No, not except——")

Mr. Coates: I do not want to and won't be discourteous to this witness, but I don't want him to volunteer.

The Court: I know that; we will let him finish what he started to say.

Q. All right, Mr. Elrod; except what?

A. Except that I had appraised the property, as previously testified, as a going entity, with business attached, as against one not so advanced. In other words, if the property had had no business attached and no establishment effected, I would have appraised the property as junk.

[fol. 1441] Q. As Junk? Well, how much would you have appraised them for, as junk?

A. I would have appraised them at the cost of the properties, less the cost of taking them up and salvaging them for whatever could be had for them.

Q. Well, have you in your mind any figure as to what that would be?

A. No.

Q. What the junk value is? I am trying to pin down and get the dollars of going value you have allowed.

A. I have not made any such estimate of dollars for the going value.

Q. Well, you say you can not find it in here on any page, and you can not state the number of dollars that it is?

A. That is correct.

Q. And yet you say it is in here, do you?

A. That is correct.

Q. Well, how is one picking up this exhibit to know where it is, and how much it is?

A. From my statement that the properties were valued as a going concern; that is, as a going entity, with business attached.

Q. All right. Now on yesterday, Mr. Elrod, didn't you testify that your direct structural costs constitute the prices of material plus the costs of installation?

A. Yes.

Q. And that the prices of material that you used were based on manufacturers' quotations and catalogs?

[fol. 1442] A. Yes.

Q. And that the costs of installation included the labor of hauling and the cost of hauling, and the cost of ditching, and so forth?

A. Yes.

Q. Now where, in any one of those elements going to make up the direct structural costs, is anything added in for going value?

A. Well, when those properties are put into the ground, assembled and pipes cut, fitted and buried, unless they are used and usable in a going concern with business attached, they have no value, other than junk value, because they have to be taken up, and the cost of taking them up and uncovering them and salvaging them is the measure of junk value. Now, the cost of going concern can get into a company's books only in two ways——

Q. Now, wait a minute. Read the question, because I think you are getting on to something that is not responsive.

(The following question is read: "Now where, in any one of those elements going to make up the direct structural costs, is anything added in for going value?")

Mr. Bobbitt: We submit, if the Court please; he has asked him that, and he is trying to tell him.

The Court: Well, he is waiting for him to tell him.

Mr. Bobbitt: No, he is trying to stop him.

Mr. Coates: What was his last sentence there; read it and let's see if that is responsive.

[fol. 1443] (Whereupon the following is read: "Now, the cost of going concern can get into a company's books in only two ways——")

Q. Now, Mr. Elrod, I am not asking you about the company's books but about Plaintiff's Exhibit 9, and am directing your attention to the direct structural costs in the exhibit, and asking you where in those direct structural costs, which you say constitute the costs of material and costs of installation, is this item of going value?

A. I believe it would be impossible for me to tell you unless I can refer to the matter of the operations of the company, because——

Mr. Bobbitt: Now, we submit, if the Court please, he is asking about those elements and how he gets the going value hooked up with those elements, and this witness is trying to tell him.

The Court: Yes he is trying to answer, but you are the man who is stopping the witness this time, Mr. Bobbitt, and not Mr. Coates.

Mr. Bobbitt: No, I am trying to stop Mr. Coates from stopping him.

The Court: Mr. Coates had not objected yet.

Mr. Bobbitt: If the reporter will read that back there.

The Court: Yes, he tried to stop him or make an objection back yonder some little bit; there was some objection then but not at this point.

Q. I will withdraw the question and start over. Mr. El-
[fol. 1444] rod, I am now directing your attention to this volume which has been marked for identification Plaintiff's Exhibit 9. You are familiar with it?

A. Yes.

Q. You made it?

A. Yes.

Q. In that volume, on page B you show what you had termed the direct construction costs of the transmission system property and the distribution system property, do you not?

A. Yes.

Q. Which is reflected—that is, these direct construction costs are reflected on page B of Plaintiff's Exhibit No. 9, by the total figure, cost new, of $897,471.00. Is that correct?

A. Yes.

Q. And by cost new less depreciation of $686,923.00.

A. Yes.

Q. Now, that makes up the total of the direct structural costs which you have said include the costs of material and the costs of installation of this property, as shown by its inventory?

A. Yes.

Q. Now then, I asked you where, in any of these direct structural costs represented by the figures that I have pointed out, is any going value?

A. I don't believe I can answer that question directly, or direct your attention directly to where any such item is, [fol. 1445] without our understanding each other as to what going concern value is. My conception of going concern value is the value that attaches to a business as being established, and going, doing business with customers attached; the cost of that or the sacrifices made to produce that condition, such as the training of a personnel, the assembling of records and getting the people in a receptive mood to take the commodities of the utility——

Q. Well, are you through?

A. No. And these items are proper charges to capital account. If they are not charged to capital account, they are charged, if they are charged at all, to operations. They are not charged to capital account, so far as I can find. If they have been charged to operations, they have been taken care of or it doesn't matter whether they have been taken care of or not.

Q. But I am talking about Plaintiff's Exhibit 9. Now, the direct construction costs are your engineering estimates of the cost of purchasing and installing and bringing into a completely constructed property, the inert physical elements of this property, are they not?

A. Yes.

Q. Now then, in those costs and in those dollar figures of $897,471.00 cost new, and $686,923.00 cost new less depreciation, is there any element of going value or does that constitute costs of material as estimated by you, and the costs [fol. 1446] of installation, as estimated by you?

A. Yes, and the difference between that and what the properties would be worth if they had no business attached and were not a going concern is perhaps the measure of going concern—that is, the junk value.

Q. Do you purport this to be an engineering estimate of costs or a legislative finding of value?—These direct construction costs here?

A. They purport to be an estimate of costs.

Q. And that is an estimate of costs. Well then, where, in those estimates of cost, is any element for going value?

A. Just in just what I have said, in that they are valued as a going entity, and if they had not been valued as a going entity, they would have been valued as junk.

Q. Well, let's go over it again.

A. You will get the same answer.

Q. Take a pipe line. In computing the cost of that transmission line from Carolina-Texas to Laredo, the first element you got was the cost of the pipe, as quoted to you by a manufacturer, laid down at Laredo?

A. Yes.

Q. And then you computed the cost of unloading and hauling that pipe, and stringing it, didn't you?

A. Yes.

Q. And then you computed the cost of digging a ditch?

A. Yes.

[fol. 1447] Q. And then the cost of coupling up that pipe, and then laying it in the ditch?

A. Yes.

Q. And then testing it?

A. Yes.

Q. And then the cost of covering up the pipe in the ditch?

A. Yes.

Q. And then you cover such costs as workmen's compensation and incidental plant expenditures?

A. Yes.

Q. And when you got through with that, you were through with your direct construction costs, weren't you?

A. Yes.

Q. Where, in there, is any element of going value?

A. If I had been making an appraisal of the property and found it had no business attached and was not a going entity or a going concern, I would have estimated what its value was to take it up and salvage it.

Q. Then as I understand it, your answer is that the going value is the difference between the cost of the material and the cost of installation, and what you would recover if you turned right around and having computed the cost of installing this pipe line, pulled it up again? Is that right?

A. No, that has been used as the measure of going value, but I have not used that, and as a matter of fact, I have not used any measure of going value, because I have not found [fol. 1448] any going value in the property other than the property was valued as a going concern and given its full structural costs, and I considered the history of the company, that it had earned money from the start and had earned its own going value.

Q. Then, as I understand it, going value, if it is included in the direct construction costs at all, is not the cost or is not the difference between the direct cost to install it and what you would salvage if you pulled it up?

A. No.

Q. Well, where is it in there?

Mr. Bobbitt: Now, I submit, if the Court please, the witness has told him about three times.

The Court: Yes, I think so. The witness has answered that question; whether or not his answer is satisfactory to Mr. Coates is another matter——

Mr. Bobbitt: That's just it.

The Court: But I know the witness has told his version of it at least twice.

Mr. Bobbitt: I don't want to say it is the witness' theory of it, but it is his idea of——

The Court: He has said the same thing about three times, Mr. Coates.

Mr. Coates: I want to find out what he has included as that value, and the only way I know how to express value is in terms of dollars.

The Court: He has told you he did not express it as a [fol. 1449] separate value, in dollars and cents.

Mr. Coates: But he has said that he has included it in his estimate of costs and I want to know where it is.

The Court: He says because it is a going concern.

Mr. Coates: And I am now trying to show that he only has in here the costs of installation.

The Court: I will let you ask him and let him tell you one more time.

Q. Haven't you included in here in these direct construction costs only the costs of material and costs of installation?

A. Yes.

Q. All right. Now, what have you got included in these undistributed construction costs? Are those your estimates of the costs which would be incurred in the reconstruction of this property, as it was constructed?

A. Yes.

Q. They are out of pocket expenditures that you estimate would be incurred?

A. Yes.

Q. For these separate items of cost?

A. Yes.

Q. Now, where in there is any going value?

A. Those costs would be entirely wasted and of no value at all if the concern was not a going concern, and if the property was not connected up with gas fields on one end and customers on the other and doing business.

[fol. 1450] Q. Then those items, if you built a pipe line and never used it and had to pull it up, they would be non-recoverable items, would they?

A. Yes, except what salvage value you would get out of the property.

Q. What salvage value would you get out of engineering during construction?

A. You would not get any. That is why I say those items would all be lost.

Q. Then materials and supplies. That constitutes the inventory of materials and supplies?

A. Yes.

Q. Is there any going value in there?

A. Only as stated. They would have a value for resale, if they were not usable, or if they were not connected with a going concern.

Q. And is there any going value in your working cash?

A. Only as stated. If the concern were not a going concern there would be no use for working cash.

Q. Do you subscribe to the proposition that going value

is the added element of value inhering in a property, over and above the values of its component parts, by reason of the fact that it has its business attached, its operating personnel trained, its operating routines established and is in connected and coordinated operation?

A. Yes.

[fols. 1451-1474] Q. And have you separately evaluated or evaluated at all any such element in this property?

A. No.

* * * * * * *

[fol. 1475] Tuesday, March 27, 1934.

Afternoon Session: 1:30 P. M.

MAYOR ALBERT MARTIN, recalled by plaintiffs, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. Mayor Martin, I believe at the time we recessed the other day when you were on the stand you had just testified in respect to your opinion of the increased number of meters for the use of gas that would result from the lowering of the price of gas in the City, and you had testified in respect to the amount of wood, or the fact that there was a good deal or a large amount of wood hauled into the City and there disposed of and used by people for fuel purposes?

A. Yes, sir.

Q. Now, I believe you testified something about having sold wood off of your ranch north of the City there?

Mr. Coates: It is understood that our objection goes to all this.

The Court: He hasn't started testifying yet today.

Mr. Coates: Well, I may be too early.

Mr. Bobbitt: You have objected to all this line of testimony before, and you are renewing your objection?

[fol. 1476] Mr. Coates: I just want to preserve my objection.

Q. Do you know approximately how much wood you have sold per month from your ranch for the purposes you testified about the other day?

A. Yes, sir. Since last May I have sold in the neighborhood of not less than forty-five to sixty dollars a month worth, at seventy-five cents a load.

Q. And your ranch is sixty-six miles from Laredo?

A. Yes, sir.

Q. I believe you said fifty-five miles north on paved road, and then ten miles on dirt road, along Nueces River?

A. Yes, sir.

Q. You sold it at 75 cents a truck-load?

A. Yes, sir.

Q. And how much approximately is hauled per load?

A. A cord to a cord and a half, I reckon; it is a good load.

Q. And you have sold that to people who are delivering it and selling it within the city limits of Laredo?

A. Yes, sir.

Q. I believe you testified that there would be twelve to fifteen hundred additional meters as a result of the reduced price if the reduced rate went into effect?

A. Yes, sir.

Q. What do you base that estimate on?

A. My general knowledge of conditions in Laredo. Quite a number of people have complained to me with reference to the high price of gas.

[fol. 1477] Mr. Coates: It is understood our objection goes to all this line of testimony?

The Court: Yes, sir.

Q. Go ahead.

A. They would all connect up if they could get a cheaper rate. And further, I made a little survey of my personal files through the Sanitary Inspector of the City, and from their figures and information, why, that is where I base my conclusions.

Cross-examination.

Questions by Mr. Coates:

Q. Mayor Martin, you have been connected with the City in an official capacity for many years?

A. Since 1920, in April.

Q. And during that time has the municipal government ever operated any form of public utility?

A. No, sir.

Q. That is, the water company there is privately operated, isn't it?

A. Yes, sir.

Q. Have you ever operated a gas distribution company or any other form of public utility?

A. No, sir.

Q. And have you ever done any work in attempting to secure gas consumers?

A. That is none of my business, no, sir.

[fol. 1478] Q. What business have you been engaged in?

A. When I returned from the War I went back to my official position that I had left, as Assistant Cashier of the Milmo National Bank, and I stayed with the Milmo National Bank as Assistant Cashier for some time, and ascended to the Presidency of the Bank in 1931; and in 1926 I was elected Mayor of the City. The Milmo National Bank was succeeded by the First National Bank of Laredo.

Q. Your business has been that of a banker and ranch-owner and operator?

A. Yes, sir.

Q. And it has been confined very largely to those two types of business with the exception of your service in connection with the City?

A. Yes, sir.

Q. Now, as I undersand your position, Mayor Martin—just so we can understand each other—what you are attempting to get here as the Mayor of the City is lower gas bills for your consumers in the City of Laredo, is it not?

A. Yes, sir.

Q. And that was the idea you had in mind at the time the rate reduction ordinance was passed, wasn't it?

A. Well, that was passed after we had made—had ordered an investigation through an ingineer—based on his figures.

Q. That is what you had in mind?

A. Yes, sir.

[fol. 1479] Q. And that was the result that you thought the rate reduction ordinance would have?

A. Yes, sir.

Q. Then when the Commission's order came along fixing the 55-cent net rate, why, as Mayor of the City, you attempted to enforce and put into effect that rate?

A. Yes, sir; but we didn't get a chance.

Q. I believe the present rate is 75 cents, less ten per cent discount?

A. If paid within ten days.

Q. If paid within ten days?

A. Yes, sir.

Q. And the Railroad Commission's rate is 55 cent- plus ten per cent penalty if not paid within ten days?

A. Yes, sir.

Q. Assuming prompt payment in the case of both rates, that is approximately a twenty per cent reduction, is it not?

A. I haven't figured it.

Q. As a banker you can figure per cents pretty well, can't you?

A. I could, if you give me a little time to do it.

Q. Well, it is approximately 20 per cent reduction, is it not?

A. I have not figured it, but I can figure it. If you say that is what it is, I will agree with you, Mr. Coates. I guess you are right.

Q. All right. It has been your intention, and you have [fol. 1480] stated on a number of occasions, haven't you, that by putting that rate into effect, why, that would give the residential consumers there in Laredo approximately twenty per cent reduction in their gas bills?

A. Yes, sir.

Q. And that is the effect you think the putting into effect of this rate will have?

A. Yes, sir.

Q. And you likewise announced on numerous occasions that if the rate is put into effect that there will be a refund of at least twenty per cent of the amount paid by the residential consumers?

Mr. Bobbitt: Doesn't the order of the Commission provide just what you are interrogating this witness about? The order of the Commission provides for a refund, and it is in evidence here, and his statement of what the order of the Commission provides would not add anything here.

Mr. Coates: It is cross examination of this witness.

Mr. Bobbitt: He is asking him if he has not stated on

numerous occasions that if this order of the Railroad Commission goes into effect it will result in a lowering of the rates a certain percentage and that a refund would result to the rate-payers of Laredo.

The Court: Well, on what grounds do you object?

Mr. Bobbitt: I think it is immaterial and irrelevant to any issues here, and the order of the Commission in writing [fol. 1481] would be the best evidence of that fact.

The Court: The objection is overruled.

Mr. Bobbitt: Note our exception.

Q. And you have stated on numerous occasions, have you not, that if the rate is put into effect that it will mean consumers will get a refund of approximately twenty per cent of the amount of the bills that they have paid since January 1, 1932?

A. I have stated that because of the fact that is what the order of the Commission carries, the difference between the 55-cent rate and whatever rate we have been paying.

Q. And the amount the residential consumers would pay under the 55-cent rate would be approximately 20 per cent of what their bills had been prior to that time?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. You are attempting to both secure this refund in the amounts of bills paid back to January 1, 1932, and for the future, are you not?

A. To sustain the order of the Railroad Commission.

Q. And that is the effect you think this order will have, is it not?

Mr. Bobbitt: That calls for a conclusion.

The Court: Yes, sir. The objection is sustained as to what effect he thinks it will have.

[fol. 1482] Q. That is your opinion, is it not, and you have so stated on numerous occasions, that this 55-cent rate if put into effect would reduce the average bills of residential consumers there in Laredo about twenty per cent over what they were paying under the 75-cent rate?

A. Yes, sir.

Q. And that is the amount of reduction that you as a house-owner there in Laredo would expect to get in your average bill under the 55-cent rate, is it not?

A. Yes, sir.

Q. Now, did you state that there were about three thousand people down there in Laredo that were registered as either partly or wholly public dependents?

Mr. Bobbitt: You mean C. W. A.?

Mr. Coates: Yes, sir.

A. Yes, sir.

Q. Are those heads of families, or every member of the family?

A. No; that includes bachelors, as well as heads of families.

Q. Does it include children?

A. No, sir.

Q. But it includes bachelors and married men—a bachelor counting one, and a married man counting one?

A. Yes, sir.

Q. There in Laredo, Mayor Martin, they have somewhat larger average size families than they do in the interior of the State, don't they?

A. I am not an expert on that; but I would judge it would [fol. 1483] run around five to the family.

Q. Do you think the over-all average in Laredo—you mean five children?

A. Five members to each family.

Q. That is, mother and father, and three children?

A. Yes; I think that is what the records of that Commission have shown.

Q. What Commission?

A. The Relief Commission.

Mr. Bobbitt: Are you asking about the general condition, or the relief condition?

Mr. Coates: I am asking his judgment about the average size family there in Laredo.

The Court: Well, he has answered. Go ahead.

Q. Do you know in what county this Sevando-Benavides Estate is located?

A. It is located in Webb County, Duval County, and Zapata County—three counties.

Q. Do you know whether that is in what has been referred to here as the Carolina-Tex field up here, or in the Cole-Bruni Field?

A. It is in both.

Q. Does it extend into the Carolina-Tex Field?

A. Yes, sir.

Q. And are there nineteen wells on that Estate in the Carolina-Tex Field?

[fol. 1484] A. No; in both fields—in the Cole and in the Carolina-Tex.

Q. Do you know, of the nineteen wells to which you have referred, how many of them are in the Carolina-Texas Field, and how many are in the Cole-Bruni Field?

A. It is approximately—divided into nine and ten, more or less—it is just about the same number of wells in each field.

Q. About the same number in each field?

A. Yes, sir.

Q. Do you know approximately how many houses there are in Laredo having three rooms or better that are not equipped with gas?

A. No; I couldn't say.

Q. Do you know how many having four rooms or better that are not equipped for using gas?

A. I couldn't say.

Q. This twelve or fifteen hundred customers, from among what class of people would you expect those customers to come, Mayor Martin?

A. Well, from all classes of people—good laboring class of people getting all the way from one to three dollars a day.

Q. Do you know anybody getting as much as three dollars a day that does not use gas in his house?

A. I have not made a particular study of it. I don't know definitely.

[fol. 1485] Q. Do you know anybody that is getting as much as two and a half a day that does not use gas down there?

A. I have not gone into that particular feature of it.

Q. Do you know whether this twelve or fifteen hundred customers, what part of them are located on the same streets the Company has lines on?

A. No; I couldn't say that either.

Q. Do you know what part of them the Company would have to extend its mains to in order to reach?

A. I do know, Mr. Coates, if you had a map of the City of Laredo, what it would cover. If you are familiar with the City, most of the population in the City of Laredo lies be-

tween, north of the Texas-Mex. tracks, if you know where they are?

A. Yes.

A. —and west of what we call the Arroyo Zacate. In a number of instances in there there are twenty-five or thirty houses to the block; and it covers probably from the Arroyo Zacate to Santa Maria Avenue, and from Bruni Street to the Tex-Mex. tracks.

Q. What size blocks are those?

A. About 330 feet.

Q. What size house- are they?

A. Well, the majority of them, I guess, are three to five-room houses.

Q. Each occupied by a single family?

[fol. 1486] A. Yes, sir.

Q. And is that section largely populated by people of Mexican extraction?

A. Yes, sir.

Q. And it is in that area where you think these twelve to fifteen hundred customers could be picked up largely?

A. The majority of them.

Q. Can you state about what per cent of the twelve to fifteen hundred would be picked up there?

A. Around 700.

Q. In your judgment?

A. Yes.

Q. And what about the remainder of them?

A. The remainder would have to go over there east of the Creek, and what is known as the Colone Hidalgo.

Q. And what size are the blocks over there?

A. About the same.

Q. Just about the same character of residential section as the one you have just previously described?

A. No; it is probably a little better construction?

A. A little better construction?

A. Yes, sir.

Q. You think the remainder of them would come over there in that section?

A. Of course, Laredo is a large city. Take the last census, I think it gave it 32,618, that was 1930; and certainly the [fol. 1487] population has increased, and it has got to go all over the town there; I can't tell you definitely where; but as I have stated before here, from my personal knowledge of conditions as they exist there, knowing the people, and

living there all my life, and having heard them express themselves, and——

Q. Just a minute. I don't like to object to anything you say, but I believe you are not permitted to make voluntary statements here.

The Court: Stick to the question.

Q. But you think of the twelve to fifteen hundred customers, by far, or practically all of them would be picked up in those two areas?

A. The majority of them, yes.

Q. And is there any other area of like kind that you have in mind?

A. Naturally, I have it distributed all over the town, Mr. Coates.

Q. But these are the two principal areas?

A. Yes, sir.

Q. And are there residential sections such as these in other parts of the town where you think the balance of the twelve to fifteen hundred would be picked up?

A. Yes; I think they would be picked up down in an areas south of Iturbide Street to the River, and west of Santa Eduardo Avenue.

Q. You think they would pick up some in there, too?

[fol. 1488] A. Yes, sir.

Q. I believe you stated that the average cost to the consumer of making installations for using gas would be from six to eight dollars; I think that was your testimony?

A. Yes, sir.

Q. I believe you said that would be a connection for a cook stove or a hot plate?

A. Yes, sir.

Q. And a space heater?

A. Yes, sir.

Q. And that was about the character of equipment you expected these people to put in?

A. And a light.

Q. Would they have a cook stove, a space heater, and a light?

A. They would have approximately two lights, a cook stove, and a little heater.

Q. Do you think they could get all that for an investment of six to eight dollars?

A. I am not qualifying with reference—as an expert on that particular matter.

The Court: You don't mean to intimate he could buy the cook stove, and heater, and all that for six or eight dollars?

Mr. Bobbitt: I understood him to testify that the installation would probably be that.

The Court: The installation from curb to house would be six to eight dollars?

[fol. 1489] Q. Did the Six to Eight Dollars simply cover the yard service line and the house piping?

A. Yes.

Q. And do you know what yard service lines cost per foot, installed?

A. Well, it wouldn't cost over fifteen to twenty cents a foot.

Q. Have you ever bought and installed any yard service lines?

A. Yes.

Q. What size would that be?

A. It's that small size pipe you use.

Q. One and one-quarter inch?

A. No, no.

Q. One-half inch?

A. Half inch, if any; that's about what it would be, yes.

Q. Would that go for pipe that was protected—that is, that had protective coating on it?

A. Well Mr. Coates, you are covering too much territory. I am not an expert with reference to those matters, but I guess I could get you the figures and information. I would rely on some plumber or some plumbers, if I was going to make an installation.

Q. I was not doubting you but was testing the accuracy of that statement, Mr. Mayor, because I want to know how much you know about the actual cost of installing these yard services and the house piping.

Mr. Bobbitt: Do you suggest that in these little instal-[fol. 1490] lations of yard pipes here, that you have them wrapped with this protective coating you have for transmission lines?

Q. I didn't suggest it; I am asking the witness a question.

A. If I may be permitted to say this—they don't care, because their meter is right at the gate, you know, just as

they come in, and that is a matter that they wouldn't be interested in. Because if it is going through the meter it is registered against the property owner.

Q. Do you mean to say the meters there in Laredo are at the curb and not at the house?

A. It is right at the curb.

Q. In all instances it is right at the curb?

A. No, but in the instance of today, they are just as close to the line as they can possibly get it inside of the property line.

Q. That is, the meters you have seen installed at Laredo are installed at the curb and not at the house?

A. They are installed all over the lots.

Q. And so your——

A. I will tell you in my own particular instance, Mr. Coates, mine is right at the entrance to the kitchen, and here six or seven years ago, it developed that the line in there through the yard, we were using a lot of water, and it corroded and the gas company was evidently losing lots of gas, and they wanted to put it in right there but I wouldn't let them and finally after we had a little dispute about it, I put [fol. 1491] in all that line myself and protected it and the meter remained where it is.

Q. The meter remained where it is.

A. Yes.

Q. Where there was a loss of gas through the yard service line?

A. Yes.

Q. Then in your judgment the yard service line and the house piping in these residential districts we have been talking about would cost six to eight dollars?

A. In the class of connections I am talking about, Mr. Coates, yes. I am not talking generally about the handsome houses, the beautiful hardwood floor and an expensive proposition. All of those people that have that sort of home are now connected, but I am talking about the good, general run of hard working people that use their gas and cook their meals and pay their bills as well as the balance of them.

Q. And their yard service line, in your judgment, would cost from six to eight dollars?

A. Yes.

Q. And would that likewise cover their house piping? That is, the piping that leads from the meter location or

from outside the house to the outlets for the use of that gas in the house?

A. That depends on how many connections they want to get and where they want to run it.

Q. For the type of construction you have been talking about.

A. Yes, it would for that type of construction.

[fol. 1492] Q. The six to eight dollars would cover both the yard service line and the house piping?

A. It would cover fifteen to twenty-five feet of pipe.

Q. Fifteen to twenty-five feet?

A. Yes.

Q. And those houses that you are talking about, most of them are located pretty close to either the street or the alley line?

A. Yes, and there are absolutely no sidewalks or curbs in any of the area I am thinking about and that we are now discussing.

Q. And what are they on—about 25 foot lots?

A. Well, that, and others are closer together.

Q. Others are closer together than that?

A. Yes.

Q. Now, the investment to use gas by those consumers would not simply consist of a yard service line and house piping, but they would likewise have to buy the stoves to utilize the gas, wouldn't they?

A. Yes.

Q. And would most of them buy a cook stove, do you think?

A. Not one of these handsome cook stoves, no sir; they would buy something within their means.

Q. Would they buy a range, or what is known as a hot plate?

A. They would probably buy a hot plate.

Q. Do you know what the approximate cost of that would be?

A. No, sir.

Q. You don't know what that approximate cost would be.

[fol. 1493] What kind of a space heater do you think they would buy?

The Court: Gentlemen, you will have to excuse me a minute; I am called on the long distance telephone. (Court is recessed for a few minutes, following which:)

Q. Then the installation for cooking which you would expect from these additional consumers would be a hot plate, would it?

A. Yes.

Q. And you would likewise expect them to install one or two lights for using gas for lighting?

A. Yes.

Q. And likewise expect them to put in a space heater?

A. Yes.

Q. And about what type or size of space heater?

A. Oh, a small one, $3.50 to $4.50 worth.

Q. A $3.50 to $4.50 space heater?

A. Yes.

Q. And about what would that hot plate cost; do you know?

A. About the same approximately.

Q. And so for an investment of six to eight dollars in yard service lines, and say seven to nine dollars in hot plate, space heater and light jet, you think they would become consumers of gas?

A. A total investment of how much?

Q. Six to eight dollars in yard service line, an average of four dollars for the hot plate and four dollars for the space heater and one dollar for the two light jets; why they [fols. 1494-1495] would then be equipped to use gas?

A. Yes. I know of a lot of them that had it, Mr. Coates, and discontinued it.

Q. And they discontinued about that character of use, did they?

A. Yes.

* * * * * * *

[fol. 1496] R. H. Montgomery, a witness for the Plaintiff, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. Your name is R. H. Montgomery?

A. Yes.

Q. Where do you live, Mr. Montgomery?

A. In Austin.

Q. How old are you, Mr. Montgomery?

A. 42.

Q. What business or profession are you engaged in, Mr. Montgomery?

A. I am a teacher at the University.

Q. At the University of Texas?

A. Yes, the University of Texas.

Q. What do you teach at the University of Texas?

A. Economics, primarily public utilities and transportation.

Q. Where did you go to school, Mr. Montgomery?

A. You mean to begin at the beginning?

Q. Yes.

A. Well, I started in Menard County, in a village called Hext—a little log cabin schoolhouse. I started there in 1897.

Q. How long did you go there?

A. I went there off and on until 1909. How much, of course, it is impossible to say.

Q. How many years did you attend school there?

[fol. 1497] A. Well, about ten years, or twelve years, with probably three months a year or two months a year.

Q. Then where did you next go to school?

A. I went to Mason high school in 1909, and graduated there in 1910—one year.

Q. In Mason, Texas?

A. Yes. And then to the Teachers College in San Marcos, 1910, '11 and '12, and graduated in 1912. Then to the University of Kansas—summers principally— until 1920, and taught there until 1920 and '21, and then came to the University of Texas.

Q. What degree did you get at the University of Kansas?

A. An A. B. Degree, an then an M. A. degree at the University of Texas in 1923.

Q. And then?

A. Ph. D. at the Brookings Graduate School in Washington, in 1926.

Q. Did I understand you to say you taught in the school of economics at the University of Texas?

A. Yes, the Department of Economics.

Q. Who is the head of that department?

A. We have no official heads of departments in the

College of Arts and Sciences at the University. The chairmanship is passed around among the full professors there in the department.

Q. How long have you taught at the University of Texas?

A. Twelve years, as professor of economics.

[fol. 1498] Q. Have you taught in other Universities?

A. Yes, I have taught in three other universities—the University of Kansas, the University of Pennsylvania and University of Pittsburgh.

Q. I will ask you, Mr. Montgomery, you were subpoenaed here to testify in this case, were you not?

A. Yes.

Q. And did you discuss the effect of this case with anyone before you were subpoenaed here?

A. I did not.

Q. What phase of economics—or utilities, as I understand you say you taught, particularly public utility matters in the school of economics?

A. Yes.

Q. What particular phase of it have you specialized on?

A. In the attempts—that is, if I tried to explain my own work in teaching, it is in the attempts that we have made to regulate public utilities and the effects of those attempts.

Q. Have you ever testified at any rate case, or have you ever testified in any case?

A. No, this is the first time I have ever been in court—in any capacity.

Q. As a witness, or a defendant?

A. Yes; that should be obvious.

Q. Mr. Montgomery, have you made a study over a period of years and if so, what period of years, of the subject of [fol. 1499] utility services and commodities furnished to the public?

A. I should say about fifteen years, since I began in that particular field, beginning in 1920.

Q. And have you made a study, Mr. Montgomery, in that line, of the price trends in respect to services and commodities furnished to the public by utilities companies?

A. If I understand what you mean, yes, of course.

Q. Have you made a study, Mr. Montgomery, of the effect of the raising or lowering of prices for commodities and services furnished to the public by utility companies?

A. Yes, I have made some detailed study in that field, particularly for the past six or seven years.

Q. Based on your study and experience in that regard, have you an opinion as to the effect of the use of a service or a commodity by a utility from the raising or lowering of the price of that service or commodity?

A. Yes, I have opinions in that field, as anyone necessarily would have who had studied, I think, the price trends.

Q. What is the effect in your opinion, Mr. Montgomery, of the price of a service or a commodity furnished to a community by a utility being lowered?

Mr. Coates: Don't answer it. May I ask Mr. Montgomery a few questions for the purpose of testing——

The Court: Yes.

Questions by Mr. Coates:

Q. Mr. Montgomery, have you ever been in Laredo, Texas?

[fol. 1500] A. Yes. I have been there, but only in passing through. I have spent very few days there.

Q. And what is the total length of time you have spent there?

A. I don't suppose I have ever been there over 36 hours at one time.

Q. And what was the last time that you spent there?

A. I was there twice during the Christmas holidays, this year.

Q. You were not paying any particular attention to gas or economic problems at that time, were you?

A. No, neither on the way down, nor back.

Q. So you have not been in Laredo for the purpose of making a particular study of that community or the characteristics of its population or the characteristics of its gas use there, have you?

A. No.

Q. And has your entire life been spent in teaching?

A. No. Not quite half of it.

Q. Have you ever operated a public utility?

A. No, I have never operated a utility.

Q. You say you have never operated a public utility?

A. Never did.

Q. Have you ever been employed by a public utility in any capacity?

A. No, none whatever.

Q. And the half of your life that you say has been spent in teaching has been the adult half of it, hasn't it?

[fol. 1501] A. Yes, or may I correct that answer just one second. I have spent about four or five years since I graduated from college that I was not in the teaching profession.

Q. What profession were you in at that time?

A. I was in the United States Army for about two years, and then a traveling salesman for a little over two years.

Q. What were you selling?

A. Engraving.

Q. And the price trends about which you have been interrogated—are those dealing with price trends generally over the United States?

A. You mean public utility?

Q. Yes.

A. Yes.

Q. And do you likewise take in any foreign countries? Are those weighed into your price trends?

A. Of course anyone in my particular field necessarily, I suppose, studies the price trends of foreign nations. My study of that nature has been primarily in Ontario.

Q. Has it been confined to any particular type of public utility service?

A. No, not confined; my work has been spent principally in electric utilities and transportation.

Q. Have you ever given any particular study to price trends with respect to the sale of natural gas?

A. Very little detailed study of my own in that field.

[fol. 1502] Q. But it is principally with respect to electric utilities and transportation, is it?

A. Yes.

Mr. Coates: We object to the question propounded by counsel and the answer sought to be elicited from this witness, because no proper predicate has been laid for the giving of an opinion by him, and it is obviously an attempt to compare price trends which may weigh in the many, varying and variant conditions over the entire United States and in some foreign countries, and apply those to the City of Laredo, and because the witness in that respect and in respect of which he has been questioned does not indicate a sufficient familiarity with the conditions existing in Laredo

for his opinion to be legally admissible, and because it is too remote and speculative.

The Court: Someone tell me what the question is now, please; it's been so long I've forgotten it. Will you go back and read the question, Mr. Reporter?

(Whereupon the following question was read: "What is the effect in your opinion, Mr. Montgomery, of the price of a service or a commodity furnished to a community by a utility, being lowered?")

The Court: I will let him answer it.

Mr. Coates: Note our exception. And may we have our same objection without interrupting Mr. Montgomery?

The Court: Yes.

The Witness: Will you read the question again, please?

[fol. 1503] (The question is repeated to the witness.)

Mr. Coates: And we object to this testimony further for each and all the reasons to which we objected to the introduction in evidence of Plaintiff's Exhibit 9 and the testimony of the witness J. O. Walker.

The Court: Overruled.

Mr. Coates: Note our exception.

Mr. Bobbitt: Now, will you read the question again, and see if we can get started? (Mr. Bobbitt again questions)

(The question is again repeated.)

A. It should increase the consumption of the service or gas, certainly, other things being equal.

Q. And that would be true, would it not, as to an increase in the users, or the number of customers or takers, generally, as well as an increase in volume by existing customers or users; is that your opinion?

A. In my opinion, that would be true of any economic good.

Q. And that is particularly true of a utility commodity or service, is it not, in your opinion?

A. Of the ones I know about, I know it is true. Of the ones I do not, I should expect that to be true, and in my opinion it would be.

Q. And that is true generally of services and commodities furnished by different utilities—that is, gas, water and lights?

A. In so far as my study goes, yes, it is.

Q. That principle, in your opinion, would hold true?

A. Yes.

[fol. 1504] Q. Now, Mr. Montgomery, this case involves a controversy in which it is sought here to sustain an order of the Railroad Commission of the State of Texas, filed June 13, 1933, reducing the price of natural gas to residential consumers in the City of Laredo from 75 cents per thousand cubic feet to 55 cents per thousand cubic feet——.

Mr. Coates: We object to the question, because the assumption is erroneous in that the rate is, as reflected by the testimony, 67½ cents net rate, as compared with a 55 cents net rate, and is based upon an erroneous assumption.

The Court: I believe in your petition you stated what those things were, and he is trying to show that.

Mr. Coates: In our petition, we explained about the ten percent discount.

The Court: However, Mr. Bobbitt, state what the actual condition is, with regard to the discounts.

Q. The 75 cent rate which was included in that question is 75 cents less ten percent for prompt payment of bills, within ten days, and the 55 cents rate referred to means 55 cents if paid within a certain time, and otherwise there will be ten percent added to it, as a penalty. Now, this suit involves that controversy stated to you, Mr. Montgomery. Is it or is it not your opinion, based upon your experience and your study of the question, that the putting into effect of the 55 cent rate, as it has been explained to you, as against the 75 cent rate as explained to you, would result in an in- [fols. 1505-1521] creased use of the gas and gas service in the city of Laredo, or a reduction of it?

A. In my opinion, it certainly would result in an increase.

Q. Does your opinion in that respect extend to an increase in the number of individual customers or consumers of the commodity?

A. I should expect both of those to occur certainly, with any material decrease in the price of any good or service.

* * * * * * *

[fol. 1522] March 27, 1934

A. D. GREENE, a witness for defendant, resumed his testimony and testified as follows:

Recross examination.

Questions by Mr. Bobbitt:

Q. You are Mr. A. D. Greene who testified here on other occasions?

A. Yes, sir.

Q. You are the Chief Engineer of the United Gas Public Service Company——

A. Yes, sir.

Q. ——as I understand it.

A. Yes, sir.

Q. And you have a number of engineers in your organization under your supervision and control?

A. Yes, sir.

Q. One of whom is Mr. J. E. Worsley?

A. Yes, sir.

Q. He is a member of your department?

A. Yes, sir, that is correct.

Q. Is he the head of a department, under you, of the company?

A. Yes, sir.

Q. What is that department?

A. He has charge of pricing and appraisals.

[fol. 1523] Q. He is a valuation engineer, isn't that correct?

A. Yes, sir.

Q. How long has he been with the company?

A. I can't give you the exact date, Mr. Bobbitt. It was about——

Q. Approximately.

A. About January 1, 1931.

Q. And he is still with the company?

A. Yes, sir.

Q. Is that Mr. Worsley's signature? (Counsel exhibits paper to witness).

A. Yes, sir.

Q. That is Mr. Worsley's signature?

A. I think so, yes, sir.

Q. Yes, sir.

Mr. Coates: Are you introducing that?

Mr. Bobbitt: Well, I don't know.

Q. Mr. Worsley was associated with the company and was under your direction, and is now with the company and under your direction as a Valuation Engineer.

A. He is now under my direction, yes, sir.

Q. And he assisted in the appraisal of the properties here involved?

A. Yes, sir, he did.

Q. In making the appraisal, Mr. Greene, of the properties [fol. 1524] here involved, particularly the gathering lines, Mr. Worsley did that particular work, did he not, for your department?

A. He prices the material, Mr. Bobbitt, exclusive of the pipe.

Q. And in making his appraisal—in working with you in the making of the appraisal of these properties he excluded from the appraisal all gathering lines, did he not?

A. No, sir.

Q. How is that?

A. No, sir, not all gathering lines.

Q. Do you know which ones he excluded?

A. He excluded the Carolina-Texas gathering system because we were carrying a one cent gathering charge, and obviously we would not include the appraisal on it and charge the gathering charge.

Q. Do you know whether or not when he was appraising these properties, that he represented to the City of Laredo that it was his understanding that the gathering lines were not to be included in the appraisal of the properties, and that he did not include them in that appraisal?

Mr. Coates: I don't know—Are you cross examining him from what is in that letter?

Mr. Bobbitt: Well, I have got the letter before me, yes, [fol. 1525] sir.

Mr. Coates: We object, because the witness is being cross examined from a letter that he has identified but which he has not been permitted to examine.

The Court: I haven't heard any questions referring to the letter at all, except asking him to identify the signature.

Mr. Bobbitt: No, sir.

The Court: I will overrule the objection.

Q. Will you read that letter, Mr. Greene, particularly paragraph four of that letter? (Counsel hands paper to witness).

A. Shall I read the paragraph?

Mr. Coates: No, read it to yourself.

A. I have read it.

Q. Now, will you read paragraph four of the letter, Mr. Greene?

A. (Reading:) "Your attention is called to the fact that my appraisal does not cover any gathering lines, wells, purchase meters or any other property in connection with production. It is my understanding that in working up the gas, a field price of five cents per thousand, or some other price, was assumed at the pipe line."

[fols. 1526-1529] Mr. Bobbitt: If the Court please, we offer in evidence a portion of the letter, particularly——

The Court: It has already been read, hasn't it?

Mr. Bobbitt: That portion has been read.

Mr. Stout: It is already in.

The Court: Yes, it is already in.

Mr. Bobbitt: Well, I don't want to encumber the record with anything that isn't necessary.

The Court: It has been read, and is in.

Mr. Bobbitt: That letter from which a paragraph has been read by the witness in evidence here is dated October 7, 1931, and is signed by J. E. Worsley, Valuation Engineer, and is addressed to the Consulting Engineer of the City of Laredo.

* * * * * * *

[fol. 1530] W. W. Stein, a witness for defendant, resumed his testimony and testified as follows:

Recross-examination.

Questions by Mr. Lange:

Q. Mr. Stein, you were on the stand several days ago, and we asked you with reference to a gas purchase contract between the South Texas Gas Company and the South Texas Production Company, with reference to the purchase

of gas flowing to Laredo. Do you have that contract with you, and the subsequent amendment to it?

A. South Texas Gas Company and the South Texas Production Company, is that the contract?

Q. Yes, sir.

A. Give me the date, please.

Mr. Bobbitt: That is the one, Mr. Stein, that we spoke at length and in detail about.

[fol. 1531] Q. Yes, South Texas Gas Company and the South Texas Production Company, dated April 10, 1928, and the subsequent amendment on November 30, 1929.

A. I have a photostatic copy of the contract.

Q. Is that the one you have with you, Mr. Stein?

A. Yes.

Mr. Bobbitt: Let's see them both.

Q. Is that the amendment?

A. That is the amendment. (Papers are handed to counsel.)

Q. The instruments which you handed me are photostatic copies of the originals of the contract and the amendment, is that correct?

A. I would like to see them, please. (Papers are handed back to witness.) The photostat of the contract between the South Texas Production and the South Texas Gas Company, dated the 10th of April, 1928, is a copy of the original.

Mr. Coates: Now, what is the other a copy of?

A. The other is a photostat of a certified copy of the original which is on file with the Chatham Phenix National Bank and Trust Company, Trustee.

Q. That is the original contract, of which the copy that you handed me is a photostat, was dated April 10, 1928, and was executed by the South Texas Production Company by its Vice-President—do you know whose signature that [fol. 1532] is?

A. E. G. Diefenbach.

Q. Vice-President, as Seller?

A. Yes, sir.

Q. Attested by Warren J. Dale, Secretary?

A. Yes.

Q. And also signed by South Texas Gas Company, by

Alfred Borchert, Vice-President, as Purchaser, and attested by Warren J. Dale, Secretary?

A. Yes.

Q. And the amendment to the contract, the photostat of a certified copy of which you handed me, dated November 30, 1929, is executed by South Texas Production Company, and signed by W. W. Stein, Vice-President. That is your signature on the original?

A. My signature is on the original, yes.

Q. As Seller, and attested by N. N. Oille, Assistant Secretary, and the South Texas Gas Company, by O. R. Seagraves, President, as Purchaser, and attested by Leo Wright, Secretary?

A. Assistant Secretary.

Q. Assistant Secretary?

A. Yes.

Mr. Lange: We desire to introduce both of these contracts in evidence, and have the Reporter identify them.

[fol. 1533] Mr. Coates: We have no objections, so far as their authenticity is concerned, but we object to them as immaterial and irrelevant to any issue in this case, not relating to the period under review and having no materiality.

The Court: Are they the contracts you have been talking about all the time?

Mr. Lange: Yes, sir.

The Court: All right; the objection is overruled.

Mr. Coates: Note our exception.

(Thereupon the contract dated April 10, 1928, was marked as Plaintiffs' Exhibit No. 10, and the contract dated November 30, 1929 was marked as Plaintiffs' Exhibit No. 11. Said Exhibit No. 10 appears in Volume of Exhibits III, page 1974; and said Exhibit No. 11 appears in Volume of Exhibits III, page 1978.)

Mr. Lange: That is all, Mr. Stein. Oh, one further matter.

Q. You were asked to furnish us the number of meters in the City of Laredo covering gas purchased at seventy-five cents per thousand cubic feet for the year ended December 31, 1933.

[fol. 1534] A. I was asked for that, yes.

Q. Will you give us that, please?

A. What date was that, please?

Q. December 31, 1933. Do you have them for December 31, 1932, also, if you can give it to us for both years?

A. Inside of City of Laredo, 75-cent customers, as of January 1, 1934, total 4407.

Q. That is at the 75-cent rate?

A. Seventy-five cent gross rate.

Mr. Bobbitt: What was that number?

A. 4407.

Q. That is January 1, 1934. Do you have it for the previous twelve months?

A. As of January 1, 1933, 4318.

Q. Do you have it for the previous year?

A. I do not.

Mr. Bobbitt: That is all, Mr. Stein.

Mr. Coates: That is all, Mr. Stein.

(Witness excused.)

[fol. 1535] Leon O. Lewis, recalled by the plaintiffs, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Mr. Lewis, do you have by classification the meters in use in the City of Laredo for the five-year period as reflected in your operating statement introduced in evidence in this case?

A. Yes, sir; I have.

Q. Just give them to us.

Mr. Coates: To which we object as to the number of meters in use prior to the period under review, namely 1932 and 1933.

The Court: I didn't understand the question. What was it?

Mr. Lange: The number of meters by classification, that is, residential, industrial, and commercial, for each year during the five-year period covered by his operating statement.

Mr. Coates: Our objection goes to all except the last two years.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

A. Before I give this I would like to explain that the classification throughout this entire five-year period has not been the same; in other words, there have been some [fol. 1536] changes in classification, and as I give the figures I will mention the changes.

Did you get this from the Company's records?

A. This is the classification carried on the Company's books. For the year ended June 30, 1929: domestic meters, 4526; semi-industrial, 92; industrial, 18; affiliated companies, 1. These figures I am giving are the average number of meters in service for the year ended as of the date stated. For the year ended June 30, 1930: domestic, 4714; semi-industrial, 100; industrial, 8; affiliated companies, 1. For the year ended June 30, 1931, there was a change of classification at November 1, 1930; the domestic classification was discontinued at that date and residential classification was begun; the semi-industrial classification was discontinued and a commercial classification added; and there was added a government and municipal classification. The number of meters contained in the domestic or residential classification is 4533; the semi-industrial, commercial classification, 224; government and municipal classification, 25; industrial, 8; affiliated companies, 1. For the year ended July 31, 1932, residential, 4287; commercial, 330; government and municipal, 30; industrial, 8; public utility, 2; affiliated companies, 1. During the year ended December 31, 1933, there were some meters taken out of the commercial classification and classified as industrial. The figures for that year, residential, 4176; commercial, 287; government and municipal, 25; industrial, 16; public [fol. 1537] utility, 2.

Q. That covers the five years?

A. Yes, sir.

Q. For the same five-year period as the operating statement heretofore introduced in evidence by you?

A. Yes, sir.

Q. And you have heretofore given us the volumes for this same period, and the total amount in dollars?

A. Yes, sir.

Mr. Lange: That is all.

Mr. Coates: That is all.

(Witness excused.)

R. H. HARGROVE, a witness called by the plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. What is your name?
A. R. H. Hargrove.
Q. Where do you live?
A. Houston, Texas.
Q. What is your business or occupation?
A. I am Vice-President of the United Gas Public Service Company, in charge of Production and Transmission Operations.
Q. Are you here complying with the request and the [fols. 1538-1541] promise made by Mr. Dickerson to furnish certain information that he said he would furnish us?
A. Partially for that purpose.
Q. Well, you are here for that purpose?
A. Yes, sir.
Q. Mr. Dickerson is not here?
A. No, sir.
Q. Have you the information he agreed to furnish us with respect to the salaries inquired about?
A. Yes, sir; I have the information that I understand he agreed to furnish. I was not here when Mr. Dickerson testified.
Q. Have you the salary list?
A. No, sir.
Q. That is what we asked for. Mr. Dickerson said he could and would furnish us the salary list of Electric Bond & Share Company.

* * * * * * *

[fol. 1542] J. V. STRANGE, a witness for Defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. J. B. Strange.
Q. By whom are you now employed, Mr. Strange?
A. By the United Gas Public Service Company.

Q. Will you speak a little bit louder?—In what capacity, Mr. Strange?

A. I am Vice-President of the United Gas Public Service Company, in charge of distribution activities.

Q. In charge of distribution activities?

A. Yes, sir.

Q. For the entire properties of that company and affiliated companies?

A. Yes, sir.

Q. And will you please give a brief and concise statement of your experience?

A. My experience in the utility business started in 1906, when I was first employed in the manufactured gas business by the Portland Gas and Coke Company of Portland, Oregon. That employment continued in the manufactured gas business until 1911, when I took a position with the Pacific Power and Light Company of Portland, Oregon. The Pacific Power and Light Company was engaged in the [fol. 1543] electric, manufactured gas, water and street railway activities. I was first—from 1911 until 1919 with that company I was employed in operating work principally as a District Manager in field operations. In 1919 I was transferred to the general offices as Assistant General Manager, my work having to do largely with commercial activities of the company and its operating problems. In 1924 I went to North Carolina, becoming Vice-President and Operating Manager of the Carolina Power and Light Company, with its head offices in Raleigh, North Carolina. That company engaged in the electric, manufactured gas, street railway, and ice business, and my duties with that company were confined to its commercial work and its operating work. In 1930 I left that company and came to Texas, taking my present position with the United Gas Public Service Company and affiliated companies.

Q. And have you been continuously occupied in performing those duties since that time?

A. I have.

Q. Are there under you as Vice-President in charge of distribution the distribution operations in the city of Laredo, Texas, Mr. Strange?

A. Yes, sir.

Q. And have you acquainted yourself with respect to the distribution system operations with respect to the city of

Laredo as well as other distribution system operations of the company?

[fol. 1544] A. I have.

Q. And since 1930 have you been solely engaged in connection with natural gas?

A. Yes, sir.

Q. Now, are you an engineer, Mr. Strange?

A. No, sir.

Q. Are you an accountant?

A. No, sir.

Q. What do you style yourself as in the public utility business?

A. As an operating man.

Q. Mr. Strange, throughout your experience in the public utility business have you made a study as a practical operating man as to the ways of increasing the consumption of public utility service which the companies that you were then serving were engaged in selling?

A. I think I have.

Q. And have you given a great deal of study to rate structures which will promote the additional use of public utility service, both in the field of electric service and in the gas service, both manufactured and natural gas?

A. I think I have.

Q. Well, now, Mr. Strange, have you found in your twenty-eight years of experience that there is a point at which the reduction of rates will not produce any substantial increase in consumption of the service and below which [fol. 1545] the reduction of rates simply means that much loss in gross revenues?

A. Yes, sir.

Q. Do you feel that the economic point or level to which you have just referred has been reached in Laredo with the rates sometimes referred to as the seventy-five cent rate, which is the rate of seventy-five cents per thousand cubic feet, ten per cent discount for prompt payment of bills, one dollar per month minimum bill?

A. Yes, I think that point has been reached in Laredo.

Q. Why?

Mr. Bobbitt: Pardon me just a second, Your Honor. Could we ask him a few questions on qualifications before you proceed?

Mr. Coates: Why, yes.

Questions by Mr. Fitzhugh:

Q. Mr. Strange, where have you ever made a study of the effect produced by rate reduction on either customer consumption or the number of customers?

A. I have made such an investigation, as far as it was possible to make such an investigation, here in Texas.

Q. What town was that in?

A. Amarillo.

Q. Are the conditions in Amarillo anything comparable to the conditions in Laredo as an operating problem?

A. I think they are comparable to this extent: that the rates were reduced there even more in percentage than the [fol. 1546] reduction we are discussing here in the case of Laredo.

Q. You are familiar with the general territory around Amarillo?

A. Fairly so.

Q. You know, do you not, Mr. Strange, that there is no wood anywhere close to Amarillo?

A. I think perhaps that is true.

Q. You know that there are no coal mines, except for the Colorado fields about two hundred and fifty or three hundred miles away?

A. Well, I don't know exactly the proximity of them.

Q. Well, you know as a fact generally that there are no coal fields close to Amarillo?

A. I am not familiar with that.

Q. Is there any fuel at all that is available to the town of Amarillo except gas or oil or the products of gas and oil?

A. I don't know, Mr. Fitzhugh.

Q. Well, you know as an operating problem, don't you, Mr. Strange, that there are no competitive fuels with gas for heating in Amarillo?

A. No, I don't. I am not sufficiently familiar with what other forms of fuel might be available there.

Q. You know, too, do you not, Mr. Strange, that the conditions of climate that prevail in Amarillo make a very high customer consumption as compared with Laredo?

[fol. 1547] A. Of course, I realize that more gas would be required in Amarillo than in Laredo.

Q. Where you have about a three or four months winter season at Laredo, you have about a six to nine months gas season—winter season at Amarillo, do you not?

A. Yes, but I don't see that that would make any difference in reducing the rates leads to increased consumption. It seems to me that it should be true in the case of Amarillo, as it is contended it would be true in the case of Laredo.

Q. Well, are you willing to have this Court and jury think, Mr. Strange, that a study of any effects produced by a rate reduction in Amarillo would be comparable with a like reduction in the town of Laredo?

A. Yes, sir; I think it is very comparable.

Q. What other towns have you investigated?

A. I have investigated on our own system other towns fairly comparable to Laredo where the rates are higher, and at higher rates the consumption is even greater than it is in Laredo, which has convinced me that within a range of, say, fifty cents a thousand to a dollar a thousand natural gas still is so cheap that those who can afford to use it at any reasonable price would do so.

Q. What other towns are you referring to now?

A. I am referring particularly to Robstown and Sinton, which are in approximately the same latitude as Laredo and seem to be the most comparable towns in which our company operates.

[fol. 1548] Q. What is the population of those two towns?

A. Well, the population is less than it is in Laredo; I can't tell you just what it is.

Q. About fifteen hundred for each?

A. No, it is much more than that, I am sure.

Q. Can you tell approximately what the population is?

A. I think in the two towns the population is between eight and ten thousand people.

Q. You mean the two together?

A. Yes, sir.

Q. About four thousand for each?

A. About four thousand in Sinton and about six thousand in Robstown.

[fol. 1549] Q. Now, at Sinton, Mr. Strange, what are the conditions as to competitive fuel?

A. I think they are approximately the same as in Laredo.

Q. Are there available anywhere near Sinton supplies for wood?

A. I think just practically the same as would be found at Laredo.

Q. Is that true of Robstown also?

A. Yes, sir.

Q. Now, Mr. Strange, doubtless you recorded all the results of your study of both the towns of Robstown and Sinton, as well as that of Amarillo—is that true?

A. Sufficiently so that I could express the——

Q. Have you any graphs or records whatsoever of those studies you made?

A. I have records as to the sales of gas to residential customers in each of these towns—Laredo, Sinton, and Robstown, and——

Q. Do you have the same for Amarillo?

A. And the average rate paid by residential customers in each of the towns.

Q. What other towns have you studied besides those three?

A. I think that is about all that I have studied recently.

Q. Now, outside of Amarillo, Mr. Strange, you have not studied any town at all where there has been a rate reduc-
[fol. 1550] tion, have you?

A. I thought Amarillo was the very best example that could be taken, because the reduction there was comparable to the reduction contemplated here, and was made in recent years.

Q. Now, answer my question, please, sir.

A. I beg pardon.

Q. I say answer my question, please, sir.

A. Will you——

Mr. Fitzhugh: Read the question, will you, please?

(Thereupon the Reporter read the last preceding question, as follows: "Q. Now, outside of Amarillo, Mr. Strange, you have not studied any town at all where there has been a rate reduction, have you?")

A. I have not, because I don't know of any other town where a rate reduction has been made in Texas.

Mr. Fitzhugh: Now, we submit, may it please the Court, that this witness is not qualified. He has not shown himself qualified by any studies that he has made of towns that are comparable with Laredo as to population, as to customer consumption, as to the general conditions as to

competing fuels, or any of the other elements that would properly be taken into consideration in expressing an opin-
[fol. 1551] ion as to what would be the probable effect of a rate reduction or a rate increase in Laredo.

The Court: The Court holds he is qualified. Go ahead.

Q. Mr. Strange, in your studies in connection with Amarillo——

(Counsel confer with Court, out of hearing of jury.)

The Court: Go ahead, gentlemen; I have ruled on the objection.

Q. Mr. Strange, in making your *duties* in connection with Amarillo, have you informed yourself and taken into account the difference in the climatic conditions which prevail in Amarillo, Texas, which is in the northernmost part of the State, as compared with the climatic conditions in Laredo, which is one of the most southerly towns in the State?

A. I have.

Q. And have you informed yourself with respect to the degrees of cold or what you term in the gas business the temperature at which the householder will normally use gas for house heating, in respect to Amarillo and in respect to Laredo?

A. I have.

Mr. Fitzhugh: May we have an exception to the Court's ruling on our objection?

The Court: Yes, sir.

[fol. 1552] Q. Now, Mr. Strange, based on your studies which you have outlined, both in respect to Amarillo and in respect to Sinton and Robstown, where, as I understand you, both higher rates and higher consumption than in Laredo prevail,—what, in your judgment, would be the effect, in respect to increased consumption by existing consumers, of reducing the residential rate from 67½ cents, net, to 55 cents, net?

A. I think such a reduction would simply mean that the customers would make the saving represented by the difference, and that the company would suffer the loss in its revenues, and that no appreciable amount of increased gas consumption would ensue, nor would additional customers come on the line by reason of this reduction?

Mr. Fitzhugh: May our objection go to all this testimony?

The Court: Yes, sir.

Q. Do you know when the residential rate was reduced in Amarillo?

A. It became effective in April, 1931.

Q. Do you know the rate that prevailed prior to that reduction?

A. I know what the average rate paid by domestic customers in Laredo was.

[fol. 1553] Q. You mean in Amarillo?

A. In Amarillo.

Q. And do you know——

A. And I might add that that classification of domestic customers includes all customers other than those few who were getting gas on the industrial rate.

Q. That is, the domestic classification as has been described here to include what is sometimes referred to as small commercial consumers?

A. Yes, sir.

Q. And do you know what the percentage reduction in rate was in 1931?

A. As I have said, the rates were reduced in 1931. Taking the average price paid per M. C. F. by all domestic customers in 1930, the first full year before the reduction became effective, and taking the same figure for the year 1932, the first full year after the rate reduction became effective, it shows that the rates were reduced 24.52 per cent.

Q. Now, do you know the percentage loss in revenues brought about by this 24.52 per cent reduction in the domestic rate, as reflected by a comparison between the first full year or the last full year in which the higher rate was in effect, and the first full year in which the reduced rate was in effect?

A. There was a reduction—a corresponding reduction in [fol. 1554] revenues of 23.34 per cent.

Q. Mr. Strange, you heard Mayor Martin's testimony as to the twelve or fifteen hundred additional customers that he would expect the company to add at the 55 cent rate?

A. Yes, sir.

Q. And you likewise heard his testimony with respect to

the character of use which he, knowing these people, would expect them to make of the gas?

A. Yes, sir.

Q. Based on your experience, Mr. Strange, and your knowledge of average residential consumptions in Laredo, what annual consumption of gas would you expect an installation of this class to show on an annual basis—that is, an installation or a small house equipped with a gas hot plate and a four dollar space heater, and one to two gas lights, as compared with the average residential consumption in Laredo?

A. I think such a customer would consume on an average approximately forty per cent of as much gas as is now being consumed by the present average residential customer in Laredo.

Q. Now, have you made any computation to show the saving to such a consumer at the rate of 55 cents, net, ten per cent penalty for non-payment within ten days, and a dollar minimum bill, as compared with the 75 cent rate, ten per cent discount and dollar minimum bill?

[fol. 1555] A. I have.

Q. Please state the result of that computation.

A. I have said that I thought the type of customer such as Mayor Martin testified to, namely, one using a little hot-plate, and one or two gas jets for lighting, and a small heater, would use approximately forty per cent of our present average consumption.

Q. Residential?

A. Residential consumption. Our average residential consumption for 1933 from our present customers in Laredo was 37,000 cubic feet.

Q. Exactly or approximately?

A. Approximately 37,000 cubic feet.

Q. That is the nearest whole thousand, is it?

A. Yes, sir. I think——

Q. And that is the annual average?

A. That is the annual average—that is the average consumption for '33—1933. I think it would be liberal to predict that a customer of this type would use as much as 15,000 cubic feet per annum, because obviously during the month when heating—room heating is not required, using just a plate and a little gas jet, not more than 1,000 cubic

— of gas would be used. Our present average consumption in the summer months in Laredo falls below 2,000 cubic feet from those customers, many of whom are using gas [fol. 1556] for purposes that could not be used by this type of customers. Now, assuming that this type of customer would use 1,000 feet of gas for nine months in the year, and then would use 2,000 cubic feet in the remaining three months of the year.

Q. That is, the heating season?

A. In the heating season, thus accounting for the annual consumption of 15,000 cubic feet, and computing those monthly consumptions at the rate of 55 cents, net, with a dollar minimum, and the present 67½ cent rate, net, with a dollar minimum, we find that the saving as against the two rates would amount to seventy-five cents in twelve months, or approximately six cents a month. I am certain that those customers who can not afford to use gas now would not be induced to put it in because of a saving of six cents per month.

Q. Would or would not be induced to put it in?

A. Would not be induced.

Q. Now, Mr. Strange, I believe the term which is sometimes used in respect to computations of rates—just a minimum monthly bill—that is, the revenues to be derived at those rates, is to state the point at which the rates cross—isn't that the term used?

A. Yes, sir.

Q. And what do you mean by the term "the point at which the rates cross"?

[fol. 1557] A. There is a point where the 55 cent, net, rate would result in a lower rate, depending upon the consumption, than the present 67½ cent rate. That point of consumption is approximately 1500 cubic feet—I believe, to be exact, 1480 cubic feet; so that any customer using less than 1480 cubic feet per month would not be benefited by the 55 cent, net, rate.

Q. Why not?

A. Because the minimum of one dollar would result in the same charge as the present rate.

Q. Under each rate?

A. Under each rate.

Mr. Coates: I believe that is all, Mr. Strange.

Cross-examination.

Questions by Mr. Bobbitt:

Q. If I understand your conclusion and opinion about these users of small amounts of gas, you have just testified about, they are not profitable or desired customers by the gas company?

A. I think customers of that type would be a burden on the present customers.

Q. I say they are not desired by the company.

A. We desire all customers, but because of the investment that would be required to serve them, the increased operating expenses that would be incurred, and the very small [fol. 1558] revenue that would be obtained, it would be a burden on the present customers.

Q. And, as I say, that group of customers, then, are not desired by the gas company?

A. For the reasons I have stated, yes.

Q. Well, that is true—they are not desired. Now, of course, your testimony here, Mr. Strange, is your opinion and your conclusions reached and are based upon the reasons you have given us?

A. Based on my experience and my study of the situation.

Q. Yes, sir, and the reasons you have given us there at the local—at Laredo, where you testified about?

A. Yes, sir.

Q. That is just your opinion, after all, isn't it?

A. It is my opinion, confirmed by my experience and my study——

Q. I understand.

A. —of the gas business, Mr. Bobbitt.

Q. Yes, sir, I say that. And based upon the experience you have testified about here in Texas?

A. Based upon my experience and my study of the gas business.

Q. You have never tried a reduction of rates, have you, as to whether or not it would bring increased consumption or increased number of customers?

A. I think we have made reductions and have studied the effect of them.

[fol. 1559] Q. I say have you tried the reduction of rates in Laredo, or Robstown, or Sinton, where you testified about?

A. No, because I——

Q. I didn't ask you why. You haven't tried any rate reductions, have you?

A. No, sir.

Q. And you don't serve Amarillo, do you?

A. No, sir.

Q. You don't know anything about the situation at Amarillo, except your investigations and what you say other folks have told you about the conditions there; in other words, you don't operate there, and you have never had any experience in the City of Amarillo in the gas business.

A. I haven't operated in Laredo—in Amarillo.

Q. How many cities does your concern serve in Texas, Mr. Strange?

A. We serve 115 towns and cities in the State of Texas.

Q. Yes, sir. You have never tried a rate reduction in any of those cities, as to whether it would bring increased revenues through increased volume of sales or increased number of customers?

A. No, because our gas rates are already very low, Mr. Bobbitt.

Q. Yes, sir. I didn't ask you why—whether they are high or low; that is a matter of opinion, of course.

[fol. 1560] A. I thought you would like to have the reason.

Q. I will ask you, Mr. Strange, thank you, if I desire the reason. Well, now, you have never tried reducing the rates in the City of Laredo for industrial purposes, as to whether that would bring increased customers or increased consumption, have you?

A. Yes, sir.

Q. When?

A. Well, notably in the case of the American Service Company—the ice company.

Q. You reduced that to seventeen cents, didn't you?

A. As soon as their contract expired the rate was reduced materially, and the consumption did not increase as the result of that fact.

Q. That reduction came, of course, during a period, as has been testified here, during a period of depression, didn't it—general depression?

A. During the last two years.

Q. Yes, sir. Mr. Strange, did you have an increase in your business in Nuevo Laredo when you sent gas through

the City of Laredo mains over to the City of Nuevo Laredo and reduced your price there?

Mr. Coates: Well, if the Court please, that is based on an erroneous assumption, in that the record reflects that this company does not operate in the City of Laredo. It [fol. 1561] sells gas to that company at the bridgehead.

The Court: Yes, sir; that was reflected by the record, as I recall it.

Q. Well, you reduced, did you not, Mr. Strange, the price of gas at the City Gate in Laredo, Texas, for delivery to the company in Nuevo Laredo, México?

A. We consented to that company reducing its rates slightly.

Q. Yes, sir.

A. And as the result of that our revenue from that source was reduced slightly.

[fol. 1562] Q. Didn't you have an increased consumption —didn't an increased consumption result in Nuevo Laredo by reason of your reduction to the Nuevo Laredo Company you just testified about?

A. Let me have that—I didn't understand your question as it started, Mr. Bobbitt.

Q. Read it please. (Question is read.)

A. No, sir.

Q. I understood you to say that you had allowed or that there had been a slight decrease in your price for delivery from the city of Laredo to Nuevo Laredo?

A. Yes.

Q. When did that reduction happen?

A. I think it was in 1932.

Q. Wasn't that at the time the soap factory and the ice factory in Nuevo Laredo quit using oil and came back to using natural gas?

A. The soap factory had been using gas previously at even higher rates.

Q. 25 cents a thousand, wasn't it?

A. Well, they were buying their gas from the other company, and I don't know what their rates were.

Q. Well, it was considerably higher than it is now?

A. I believe so.

Q. And when they reduced the rates, they went back from oil to gas, didn't they?

A. I think they had used oil only during the time they [fol. 1563] were negotiating for a revised rate from that company over there, but the result of it is that they are using much less gas today than they were formerly using at the higher rates.

Q. But when they reduced the price of gas to them, Mr. Strange, when they reduced the price of gas from 25 cents a thousand or whatever it was, down to 14 cents a thousand, or whatever the reduction amounted to, they started using gas again and ceased using oil for fuel purposes, didn't they?

A. I think that they did.

Q. And when they quit using oil and went back to using gas, that brought about an increased sale of gas didn't it, to those concerns?

A. Against what it was immediately previous, that is true; but as against what it was before they quit using gas, their consumption was much less because their business, I understand, does not have the requirements for gas as formerly.

Q. That is, business is not as good in 1932 and 1933 as in prior years

A. I presume that is true.

Q. You know that is true, don't you?

A. I know it is true generally and I presume it is true of those customers in Nuevo Laredo.

Q. Did you try a reduction at Mr. Haussman's plant in Laredo?

A. I think we offered Mr. Haussman rates as low as gas could possibly be supplied, but notwithstanding that fact, he preferred to go to oil because of his decision to go into the oil refining business.

[fol. 1564] Q. Didn't he agree and now stand ready to sign a contract with you for gas at 17 cents a thousand cubic feet for his packing plant at Laredo?

A. He might be willing to do so now, Mr. Bobbitt, because of the fact that oil has advanced to the point——

Q. I am not asking you the reason, but asking you if that is not a standing tender he has made to sign a contract to take gas at 17 cents a thousand cubic feet?

A. I have never heard of such a tender.

Q. Would you accept it if it were tendered?

A. We would give him the regular rates we give to the same industries wherever we serve them in the general area, including Laredo.

Q. And what are those regular rates?

A. They are fuel oil rates that I could not describe to you exactly, without knowing what his demands would be.

Q. Could you describe it practically or approximately?

A. They are rates based on the current price of fuel oil, and as fuel oil advances the rate advances to a certain point, and as it decreases the rate decreases within certain limits. That is the type of rate we would be willing to give to Mr. Haussman or any other customer.

Q. What does that amount to, as to the price per thousand cubic feet. How many cents per thousand cubic feet does that amount to, approximately?

A. I could answer that only if you were to tell me what his [fol. 1565] monthly consumption would be, or his annual consumption.

Q. Well, if it is 10,000 cubic feet a month, or a million cubic feet a month, what would it amount to in cents per cubic foot?

A. I will have to get the rate schedules and compute that, Mr. Bobbitt? I could not tell you off hand, because it requires some computation to arrive at the exact price.

Q. You have told us, Mr. Strange, of your large experience in the gas business as a practical operating man. I want to ask you this question—as a practical operating man and as a practical proposition—and using an approximate price if I may do so—your concern is serving gas to the Haussman packing company now in the city of Laredo?

A. No. I believe we are not serving them now.

Q. Well, you are serving them in their office, to say the least of it?

A. Perhaps so.

Q. Well, you are not furnishing him any gas for industrial purposes at the present time?

A. That is my understanding.

Q. But you are serving the Central Power & Light Company?

A. No, I believe we are not serving the Central Power & Light Company.

Q. Well, the record, I believe, shows you are.

A. Excepting for a little gas for stand-by purposes.

Q. For stand-by purposes, and you are hooked up to them, and as I understand, the record here shows each month you

[fol. 1566] are now serving a small amount of gas to the Central Power & Light Company in Laredo.

A. I believe so.

Q. However small that amount may be.

A. I believe so.

Q. Well, as a practical operating man, Mr. Strange, you have established and are maintaining facilities for transporting gas from the fields, in the Carolina-Texas field to the City of Laredo, and through the mains there to the burner of the Central Power & Light Company's plant; that is correct, is it not?

A. Yes.

Q. And you pay for the gas in the field, four or five cents, whatever it may be, and you transport that gas through these mains and these facilities that are established and must be maintained, as I understand, to meet your residential and other requirements in the city of Laredo. That is true, is it not?

A. We have to maintain our facilities to supply our customers in Laredo, yes.

Q. And the facilities through which you are transporting gas and serving your customers in the City of Laredo, are of much larger capacity than necessary for the present purposes?

A. I don't know that that is true.

Q. Well, don't you know that you could carry a larger or transport a much larger volume of gas through the existing [fol. 1567] facilities from the Carolina-Texas field to the City of Laredo than you are now carrying?

A. I do not know that. It may be we could not carry more. I don't know that, Mr. Bobbitt.

Q. You don't know?

A. No, that is an operating problem.

Q. Well, you are an operating man.

Mr. Coates: Let him answer the question.

A. That is an operating problem of the transmission and pipe line system and with which I am not connected in an operating capacity at all.

Q. Just what are you connected with?

A. With the distribution system.

Q. You don't know about that, then?

A. I don't have any idea what the demand on those lines

may be or what their capacities or anything of the sort may be.

Q. Let me ask you this question; as a practical operating man of many years experience in the gas production and distribution business, as I understand it, Mr. Strange, and excluding the price of gas in the Carolina-Texas field and taking into account all costs incurred by the company in transporting a million cubic feet of gas a day from that field to the burner tip of the Central Power & Light Company in the city of Laredo for delivery there, say on the 25th day of March, 1934, what additional, or what costs per thousand cubic feet would the company incur by reason of the transportation and delivery of that gas?

[fol. 1568] Mr. Coates: Just a minute. To which we object because the proper predicate has not been laid for this hypothetical question, and for the further reason that it is based on an assumption that the company could lawfully and would discriminate as between this sale and sales to other customers by selling such gas on a purely increment basis and without taking into account a fair apportionment of the operating expenses necessarily incurred, and the total over-all operating expenses necessarily incurred in connection with the transportation of this gas, and for the further reason that it is irrelevant, immaterial and meaningless in that the transportation of a million feet of gas on a particular day and the cost thereof would serve as no guide and no indication of what it would be on the day following or the day preceding and because as a practical proposition contracts are never made for the transportation of a fixed quantity of gas for a particular day only, but only for a contract period extending over a reasonable period of time.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

Q. Now, will you tell us? I am not asking you, Mr. Strange, to go into any detail or down to a lot of fine points; just give us as a practical operating man of long years of experience your opinion of what that cost would be.

A. I can not answer that question, Mr. Bobbitt. In the first place, I am not an engineer, and it is a question that [fol. 1569] would involve an engineering calculation——

Q. Did you ever ask your engineers——

Mr. Coates: Wait a minute and let him answer your question.

Q. All right.

A. —before it could be answered, it would involve an engineering calculation, based upon many factors which you have not stated in your question.

Q. Do you know what those factors are?

A. Well, I think I know some of them.

Q. Well, tell us all the necessary factors, if you will, that you should take into account.

A. I think one would have to know the capacity of the pipe line and its present load.

Q. Do you know that?

A. No, I do not.

Q. What is the next factor?

A. You would have to know the characteristics at which the customers would use the service, and what the deliveries would be per hour and per day.

Q. You don't know that?

A. I said I knew some of them.

Q. You don't know them all.

A. I don't profess to know.

Q. Can you give us approximately and practically—would it cost you five cents per thousand cubic feet additional?

[fol. 1570] A. I couldn't say.

Q. Haven't you got any idea about——

The Court: I think the witness has answered fully that he could not answer the question.

Mr. Coates: Without telling Mr. Bobbitt what the professor told me about my question.

Q. Who is in your organization, Mr. Strange, who could tell us about that?

A. Well, I presume if you could supply all the information that is necessary——

Q. Well, you have the information. Haven't you got all the information about that business? That is the gas business I am trying to find out something about.

A. Well, I don't know who could answer the question.

Q. All right.

A. You might get Mr. Elrod——

Q. What was that?

A. I was just thinking you have an engineer here who might answer.

Q. Yes, and I believe you have several of them here, haven't you, in charge of the company's business and properties?

The Court: Let's go ahead with the case, gentlemen.

Q. Mr. Strange, what is the average, if you know—what is the average monthly consumption per customer for residential customers in the city of Laredo?

A. The average monthly consumption?

Q. Yes.

[fol. 1571] A. It would be one-twelfth of 37, for 1933.

Q. Well, what is that?

A. About 3,000.

Q. 3,000 cubic feet per month. Is that it?

A. That would be the average per month. Of course that is averaging in the winter months, when more gas is used, with the summer months when much less is used.

Q. How much does this volume of gas cost the residential cutomer under the 75 cent rate?

The Court: Do you mean by that, what is the average price per thousand cubic feet paid by the residential customer for that gas?

Q. Under the 75 cent rate, yes.

A. The average price paid by residential customers in Laredo during 1933, for all gas requirements, was $26.69.

Q. For residential purposes?

A. Yes.

The Court: Is that per year?

A. Yes, during the year 1933.

Q. What was it during 1932?

A. I haven't the figures for 1932, Mr. Bobbitt; but it was approximately the same.

Q. And you haven't got it for 1931. Now, Mr. Strange, you told us you are not an engineer and could not tell us about these things; what are your duties with the company?

A. I have supervision over all the operations of our distribution properties.

[fol. 1572] Q. You have nothing to do with the transmission?

A. No, sir.

Q. What do you mean by supervision over those distribution properties in Laredo?

A. Well, I and my assistants have general supervision of all of the activities of our various distribution organizations in the operating work.

Q. They work under your direction?

A. Yes.

Q. Are these sponsors that are sent there by Electric Bond & Share Company under your supervision?

A. No, sir. There is only one sponsor who visits our properties from the Electric Bond & Share, and he is not under my supervision.

Q. Then he is under who's supervision?

A. I presume under the Bond & Share.

Q. Don't you know?

A. No.

Q. What does he sponsor—what does he supervise?

A. He confers with the officials of the company as to their operating and financial problems.

Q. Is he the supervisor of the budget?

A. I wouldn't say he is supervisor of the budget; he certainly has much to do with the budget.

Q. You heard Mr. Dickerson's testimony, and I understood him to testify there were seven or eight sponsors, [fol. 1573] and that there was a sponsor of the budget?

A. No. I am talking about Mr. Dickerson, who is the one whom we term sponsor.

Q. Is he sponsor of the budget?

A. He is sponsor of the operations of the entire United Gas System.

Q. Have you got a sponsor of transmission and production?

A. No, not that I know of.

Q. And a sponsor of distribution?

A. No, not that I know of.

Q. You would know about it if he was there?

A. Yes.

Q. He is the one sponsor you come in contact with?

A. Yes, the only one that I come in contact with.

Q. Is Mr. Dickerson sponsor of rates?

A. He is just sponsor of the general operating and financial problems of the United Gas System.

Q. I believe you testified that the percentage of reduction of the rates in the city of Amarillo was 24.52, if you remember the figure, in 1931?

A. 24.52 percent.

Q. And the reduction in revenues was 23 plus percent?

A. 23.34 percent.

Q. Well now, the reduction in the Laredo rate, as ordered by the Commission, from a net rate of 67½ cents to a net rate of 55 cents, that would amount to an 18.5 percent reduction, would it not?

[fol. 1574] A. Yes, to those customers—that is, the rate itself would, yes.

Mr. Coates: Let's see—that is 55 as it is to 67½?

A. 18.5 per cent, I believe it will figure out.

Mr. Coates: Do you figure that down from 67½, or up from 55?

The Court: You had better figure it again, gentlemen.

Mr. Bobbitt: We can figure it if we want it.

A. Well, it is a reduction of 12½ cents, off of the 67½ cents.

Q. Mr. Strange, you testified, I believe, that you were vice president and manager of the United Gas Public Service Company?

A. Vice President.

Q. And affiliated companies?

A. Yes.

Q. What affiliated companies do you serve, along with the United Gas Public Service Company?

A. Well, there are some subsidiary companies of the United Gas Public Service Company.

Q. What are they, the ones that you serve as vice president, or in any other capacity?

A. The ones with which we have distribution operations are the Northern Texas Utilities Company, the Houston Gulf Gas Company, the Southern Gas Utilities Company, and the Houston Gas & Fuel Company, which is an indirect subsidiary. I believe I have named all of them.

Q. Any of them operating down in the Laredo district?

A. I believe not.

[fols. 1575-1587] Mr. Coates: Are those Texas only?

A. Yes, they are Texas only, and the ones in which we have distribution operations.

Q. Well, are you serving others, not in Texas?

A. I think there is one subsidiary company not in Texas, the Southern Gas & Fuel Company.

Q. You serve that company?

A. That is a subsidiary company, but it has no distribution operations.

Q. You serve all those companies?

A. They are all connected, as part of the United Gas System.

Q. Are you an officer in the United Gas System?

A. The United Gas System as such is just a name, Mr. Bobbitt. There are no officers, of that, as the United Gas System.

Q. It is not a corporation?

A. No, sir.

Q. What is it?

A. It is just a name that is given to the group of companies.

Q. I think that is all for the present, your Honor.

The Court: we will take a recess for a few minutes.

(Whereupon, at 11:10 A. M. a recess was had in such cause until 11:20 A. M.)

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[fol. 1588] Testimony of H. E. Womack

March 28, 1934

Cross-examination.

Questions by Mr. Bobbitt:

Q. The Commission in its order here amortized this Regulatory Commission Expense over a ten-year period, didn't it?

A. I don't recall that it did.

Q. You say that one-tenth of that Regulatory Commission Expense for the Laredo hearing was included for the period that you stated?

A. No; I didn't say that. I said there was less than one-tenth of the cost that the Company has incurred in connection with this Laredo Rate Case included in either the cal-

endar year 1932 or the calendar year 1933,—in the exhibits [fol. 1589] I have introduced.

Q. How much less than ten per cent?

A. Well, I have not included the same amount in each of the two years; but less than eight per cent that I have included in the year 1933.

Q. What is the amount in dollars?

A. That I have included?

Q. Yes; 1932 and 1933?

A. $3,154.10.

Q. What year?

A. In the year 1933. I don't have that exact figure for the year 1932 with me here.

Q. Do you know approximately what it is?

A. From memory, it is about seventeen hundred dollars.

Q. And that is about one-eighth, you say?

A. No; the first figure, for the year 1933, is about one-eighth.

Q. You have the total expense there, haven't you?

A. Yes.

Q. What is the total?

A. That is exclusive of any part of the year 1934, $44,511.19.

Q. $44511.19. That is the amount the Company has charged on its books to operating expenses; is that right?

A. Well, the Company has charged that amount on its books as Operating Expenses, yes.

Q. As the result of expenses incurred in the Railroad Commission hearing in this proceeding; is that right?

[fol. 1590] A. No; that is not exactly right.

Q. What is that?

A. The Company has charged that amount on its books as the cost of the Laredo Rate Case for the calendar years 1932 and 1933. Now, the Commission hearing was before the year 1933

Q. It is the result of that hearing, isn't it—expense by reason of that hearing, wasn't it?

A. Well, it is expense incurred by reason of the rate reduction ordinance of the City of Laredo.

Q. Well, that is what this is all about.

A. The City is trying to get a reduced rate.

Q. The City is trying to get a reduced rate?

A. Yes.

Q. You have spent this much, $44,511.19, trying to keep them from getting it?

A. Well, the Company has spent that much in an endeavor to at least maintain the present rates.

Q. You charged that all to operating expenses?

A. Not to the City of Laredo.

Q. Whom did you charge it to?

A. That is distributed, and the City of Laredo has paid a part of it.

Q. What part of it?

A. I just told you, for the year 1933——

Q. You mean to tell me this $44,511.19 is not charged on the books in a manner and form to operating expenses to [fol. 1591] get it back from the Laredo rate payers?

A. Yes; I mean to tell you that very thing. That is charged on the Company's books, but the Company does not keep its operating expense accounts by towns.

Q. But you expect to get this forty-four thousand dollars you have spent on this rate case back out of the rate-payers of Laredo, don't you?

A. No, sir.

Q. Whom do you expect to get it back from, then?

A. That is a general expense that has been distributed over the different sections of accounts, and I have included a part of them, as well as a part of other costs, as applying against the City of Laredo.

Q. Well, have you charged this expense in the Laredo rate case to any other city?

A. No; I have not broken it by cities, because the Company does not keep its accounts by separate towns.

Q. Mr. Womack, I am not an accountant as you well know, but isn't it a fact that this $44,511.19 charged on your books to operating Expenses incurred by reason of the Laredo Rate Case, do you expect to get that much from that community?

A. No, sir; we don't expect to do so.

Q. Where do you expect to get that back from?

A. That, along with other items, is distributed to the different districts, and to the different towns, Laredo gettins its proportionate part of the total.

[fol. 1592] Q. Wasn't it all incurred by reason of this proceeding down there in Laredo?

A. It was all incurred in connection with the controversy over rates.

Q. At Laredo?

A. At Laredo.

Q. Are you charging any other community for that expense?

The Court: I don't see how it can be answered any more positively.

Mr. Bobbitt: I don't understand it, Your Honor.

The Court: Well, then state it again.

Mr. Coates: We submit that the witness has stated that these were charged as operating expenses. Now, the operating expenses of the Company are not charged to any particular person. You don't try to collect them back out of any particular person. They are simply expenses incurred in connection with the operations of the Company.

Mr. Bobbitt: Are you testifying?

Mr. Coates: No. I am laying a predicate for my objection. We object to the question because it is based on an erroneous legal conception that operating expenses are charged to some particular community or some particular set of consumers.

The Court: Mr. Bobbitt says he does not understand it. Let the witness state it again.

Mr. Bobbitt: Yes, let me ask him the question.

[fol. 1593] Q. This $44,511.19, as I understand it, was incurred, according to your testimony, as the result of the effort on the part of the City of Laredo to reduce the gas rates there in that city?

A. It was incurred in order that the Company might attempt to maintain at least its present rates there in the City of Laredo.

Q. And if that controversy had not arisen, or if the City had not undertaken to lower the rates, none of this expense would have been incurred?

A. That is correct.

Q. That is correct. It is incurred solely by reason of that effort of the City within the City of Laredo? Is that correct?

A. The Company is attempting to maintain its present rates, at least.

Q. There in the City of Laredo?

A. There in the City of Laredo.

Q. Now, I am asking you as an accounting witness and as an accountant, why do you charge that expense to any

other community, or any portion of it, if you have so charged it?

A. Well, I have not.

Q. Then it is all charged to Laredo?

A. No, sir. I stated that the Company does not keep its accounts separated as among all the towns that it has. The cost of such an accounting system would absolutely be [fol. 1594] prohibitive. Now, when an apportionment or distribution of expense is made to a particular town, as I did make to the town of Laredo, a part of this cost is included in that expense. Now, that part for the year 1933 was the figure I mentioned a while ago—I have forgotten what it was.

The Court: All right, now, gentlemen.

Q. Why do you charge any portion of that expense to any other city?

The Court: He has told you twice he charged no portion of it to any other city.

Q. Yet it is not paid by the City of Laredo rate-payers, as I understand it?

Mr. Coates: We object, because that is based on an erroneous legal conception. The operating expenses are paid by the Company.

Mr. Bobbitt: I am not talking about erroneous legal conceptions——

The Court: I will sustain the objection; the witness has answered.

Q. Are any part of the legal expenses shown in your Exhibit due to the Laredo rate case?

A. Yes.

Q. How much?

A. I can't tell you offhand.

Q. Can you give us an approximation?

A. I cannot do that. I will have to work it up for you. [fols. 1595-1597] The reason I can't do it is because I have made a distribution from the Company down to the districts, from the districts down to the areas, from the areas down to the distribution systems, and from distribution systems to the City of Laredo. Those all carry percentage figures with them.

* * * * * * * * *

[fol. 1598] Friday, March 30, 1934.

Morning Session: 9:00 A. M.

The Court: Gentlemen, are you ready to begin now?

Mr. Bobbitt: Yes, sir. We want to piece in this testimony and furnish the information that was requested.

The Court: All right.

HENRY E. ELROD, a witness for Plaintiffs, was recalled and testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Mr. Elrod, you were requested several days ago by Mr. Coates to calculate the difference, if any, that would appear in your Exhibit 9 in connection with the Oilton-Mirando City line Have you prepared a calculation to that effect?

A. I have.

Q. Do you have it with you?

A. Yes, sir.

Q. Just explain now the nature of the correction that you have made.

[fol. 1599] A. Sixty-eight and eighteen hundredths per cent of the gas flowing through Laredo from the Carolina-Texas field, assuming that all gas is coming from that field and none through the Jennings-Pescadito line, 68.18 per cent of the total volume will be delivered at Aguilares Junction.

Mr. Bobbitt: This is Aguilares Junction. (Indicating on Map.)

A. No; Aguilares Junction is at the bottom of the point where your pencil is. The ratio of volume os gas delivered at Aguilares Junction for inside the city of Laredo is 68.18 per cent as just stated. From that point on there will be a lesser volume of gas by 3.78 per cent to be delivered to the Laredo city gate for inside and outside the city; and the ratio of volume of gas delivered at Laredo city gate for inside and outside is 70.85 per cent. The proportion of transmission properties allowable to Laredo is as follows: Carolina-Texas, Aguilares Junction section, $92,127.00, or 68.18 per cent of $62,812.00. Aguilares Junction to Laredo section, $267,001.00; 70.85 per cent is $189,170.00. The total, $359,128.00, divided into the lesser total, $251,-

982.00, gives a weighted average per cent for allocation of transmission properties of 70.16 per cent. That percentage used in the allocation of both properties, transmission and distribution, would be as follows: Transmission properties, total appraised value new, $359,128.00, times 70.16 [fol. 1600] per cent equals $251,982.00. Distribution properties, $602,258.00 new, $575,616.00 allocable to Laredo, gives a total of $961,386.00. For the unallocable new appraised value, $827,598.00; for the allocated appraised new value, or a ratio of 86.08 per cent, which is the weighted average per cent for allocation of both or the combined properties.

Q. That portion of your explanation appears on the corrected sheet marked A-1; is that right?

A. Yes.

Q. Turn to B-1 of the corrected sheet.

A. That is a general summary and allocation comparable with—pardon me.

Q. Now, then, applying the corrections you have made, what is the net difference between the former figures as they appear on Page C-1, corrected sheet, as compared with the final figures as contained in Plaintiffs' Exhibit 9, page C?

A. $7,786.00.

Q. More than the figures reflected in Plaintiffs' Exhibit 9, page C?

A. Yes.

Mr. Lange: For the purpose of the record we want now to introduce this corrected sheet so it can be identified by the stenographer.

Mr. Coates: Of course, the same objection that we had to the entire exhibit likewise goes to this.

[fol. 1601] The Court: You have the same objection to the entire exhibit?

Mr. Coates: Yes, sir.

(Thereupon the instrument above referred to was received in evidence and marked as Plaintiffs' Exhibit No. 12. This exhibit appears in Volume of Exhibits III, page 1983.)

Q. Now, in making this correction, just explain why you proceeded as you did.

A. Well, there were two elements, I believe, to be considered: one, the correction of allocation. I had originally

allocated the properties on the basis of the total transmission system from the Carolina-Tex field to Laredo city gate, excluding all gas to the outside of the city, in one lump, without reference to where it was excluded. The portion of the line, or rather the section of the line from Aguilares Junction to Mirando City, Misko and Oilton——

Q. Appearing on the map from Aguilares Junction, proceeding in a southeasterly——

A. A southeasterly direction.

Q. To Mirando City and then up to Oilton?

A. Yes. It seemed, when my attention was called to the matter, that it would be more fair, or would be fair to allocate the transmission properties on the basis of the points to which the gas was delivered, as at Aguilares Junction, the 13.5 mile stretch of pipe line between the [fol. 1602] Carolina-Tex. field and Aguilares Junction carrying the total gas and dropping 3.78 per cent at Aguilares Junction; the balance of the transmission system would not, of course, have to carry that 3.78 per cent. Consequently, that should not have been included in the allocation of those properties which extended westward from Aguilares Junction to the Laredo city gate. Now, in the matter of the correction of Workmen's Compensation, Mr. Coates called my attention to the fact that the manual classification stipulated a rate of $6.18, per hundred dollars value of payroll for the construction of distribution lines. He did not tell me at that time, however, that there was a credit of 12.9 per cent on that rate; so I have gotten the history of the rate and I have deducted the 12.9 per cent, from the 6.18 per cent, and I have also deducted the 12.9 per cent from the 8.31 per cent rate used in the transmission lines. I have also deducted a cost new sum of $616.29 on page 35 of the transmission section for an item allocable to the Jennings-Pescadito line, which I omitted from the appraisal; this item inadvertently crept in and was not excluded, so I excluded that item as well as the 12.9 per cent credit on the insurance rate. As far as the situation is concerned, with the exception of that portion [fols. 1603-1605] of the properties in the distribution system which were built in 1922 or 1923 as a lump under the head of Pavements, amounting to—I have forgotten just what the figures were, but a considerable item, it was the opinion of the Rate Clerk in the Casualty Insurance Com-

missioner's office that the rate that I had used of $2.26 was applicable to all the work which the company had done in the city of Laredo, but I have used the rate that Mr. Coates asked me to use to avoid any further question about the matter, less, of course, the credit of 12.9 per cent which the policy stipulates.

Mr. Lange: I believe that is all.

* * * * * * *

[fol. 1606] Q. You made no computation on the basis of engineer at five per cent, did you, Mr. Elrod?

A. The computation engineering at five per cent is dependent upon circumstances. If the value of the——

Q. Now, Mr. Elrod, I believe my question is reasonably clear,—did you or did you not make a computation as, I think I requested, at five per cent?

A. Yes.

Q. How much would that increase the amount which you [fols. 1607-1615] reflect in Plaintiffs' Exhibit 9?

Q. Well, if I have two and one-half per cent, five per cent will be just double that, or $39,642.00; but I have made no estimate in my set-up for engineering at five per cent.

Q. Now, so that I may clearly understand you and so that the record may reflect your methods, is it not true that you treat lands, leases, and rights-of-way, materials and supplies, preliminary and organization expense, and cash working capital—or working cash, as you term it, as non-depreciable items?

A. Yes, it is true.

Q. And is not to be taken into account in the base for computing the annual reserve for depreciation, retirements, and replacements?

A. Yes.

Q. And are these not the only items contained in Plaintiffs' Exhibit 9 which you do treat as depreciable items?

A. I think so.

* * * * * * *

[fol. 1616] CHARLES W. FOWLER, JR., a witness for the Plaintiff, having been first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name, please sir?
A. Charles W. Fowler, Jr.
Q. Where do you live, Mr. Fowler?
A. San Antonio, Texas.
Q. And you a consulting engineer engaged in the engineering practice in the city of San Antonio and in that vicinity?
A. Yes.
Q. How old are you, Mr. Fowler?
A. Thirty-four years old.
Q. Did you go to school, Mr. Fowler?
A. Some.
Q. Will you tell us, Mr. Fowler, where you went to school and what degrees, if any, you secured as a result of going to school.
A. Well, I went through the public schools of Greensboro, North Carolina, to high school and through the normal high school in Greensboro, North Carolina, which I finished in 1917; and from there I went to the University of North Carolina, and finished in 1921 with a degree of B. S. in Geology.
Q. Did you go to school any further?
A. No.
[fol. 1617] Q. Mr. Fowler, as a consulting engineer and otherwise, have you had experience in the practice of your profession since that time down to date?
A. I have.
Q. Will you give us, as briefly and concisely as may be reasonable, your experience as an engineer and in your practice?
A. Well, from December, 1921, to October, 1922, I was a geologist with the Compania Mexicana "El Aguila", S. A. at Puerto Mexico, Veracruz.
Q. That is a Mexican corporation in the Republic of Mexico?

A. Yes, it is a subsidiary of the Dutch Shell, really. From October, 1922, to November, 1923, I was field geologist and chief scout for Mexican Gulf Oil Company, in Puerto Mexico, Veracruz.

From November, 1923, to June, 1927, I was geologist in charge of exploration and leasing for the Mexican Gulf Oil Company, in Northern Mexico.

From June, 1927, to September, 1927, I was chief geologist and in charge of exploration in Northern Mexico for Henry L. Doherty.

From September, 1927, to January, 1928, I was chief geologist for Henry L. Doherty on examination of Peruvian reserves, in Peru, South America.

From January, 1928, to April, 1928, I was a geologist with Brokaw, Dixon, Garner & McKee of 120 Broadway, New York, engaged in the examination of properties in Columbia, South America.

[fol. 1618] From April, 1928, to February, 1932, I was a Junior member of the firm of Brokaw, Dixon, Garner & McKee, of 120 Broadway, New York, in charge of their Southwestern United States operations, with headquarters in San Antonio, Texas.

Q. As a member of the firm, you had charge of the operations in this general area, in Texas.

A. Yes, and a part of it was out of Texas, but it was in this general area; and from February, 1932, up to this time, I have been a consulting engineer on my own in San Antonio.

Q. Have you had actual experience in the engineering work and in the actual construction of gas transmission lines and gas distribution systems?

A. I have.

Q. Will you tell us, Mr. Fowler, just what experience, and where you have had that experience?

A. Well, the firm of which I was a junior member, had a contract for the engineering and supervision of construction on the Missouri-Kansas Pipe Line, and the Panhandle Eastern Pipe Line.

Q. Did you build any pipe lines?

A. We built approximately 1550 miles of main pipe line from the Panhandle of Texas to Springfield, Illinois.

Q. Did you furnish engineering services in that work?

A. A member of the firm was in direct charge of that

engineering and I did some work under him as a junior member on the job.

Q. All right; go ahead.

A. The Texas Gas Utilities Company, located in South-
[fol. 1619] west Texas. For them we had charge of developing the project from its inception, the design and construction of the lines and the installation of distribution systems, and we put in for them 65 miles of ten inch between Maverick County and Del Rio, Texas; sixteen miles of six inch from the Maverick County field to Eagle Pass; forty miles of four inch from a gas field in Zavalla County to Carrizo Springs, and we piped the towns of Del Rio, Eagle Pass, Carrizo Springs and La Pryor.

Q. You installed the gas transmission systems in those communities?

A. We did.

Q. Did you operate them for a period of time?

A. At the time this construction was started, the town of Uvalde had a distribution system and a line to the field. We had charge of that operation while this construction was in progress and we looked after the operations of the companies until they were turned over to the operating company, which was approximately ninety days.

Q. But you constructed the transmission lines and you constructed the distribution lines for the use of natural gas in these communities?

A. That is correct. For the Dixie Gulf Gas Company we had the engineering on that job, approximately 515 miles of transmission lines. On the El Paso Natural Gas Company, we had charge of the engineering and supervision of construction on that. There is 212 miles of main
[fol. 1620] line and another line going down to the valley, which makes a total of approximately 250 miles. They are the chief enterprises with which I have been in contact, and the firm of which I was a member had direct supervision.

Q. During this engineering work, did you live in the city of Laredo during any of this period of time you have testified about?

A. Yes, at the time I was there with the Mexican Gulf Oil Company approximately three years, doing work in Northern Mexico, and some work on the American side of the River, I made headquarters in Laredo, and for approximately six months with Henry L. Doherty, I had headquarters there.

Q. You lived there how long?

A. Approximately four years altogether, and since which time I have had business interests in Laredo and have been there any number of times.

Q. Are you familiar with the gas situation, we may call it, in the Laredo area?

A. I am to a certain extent.

Q. Were you connected with or did you do any work with the Moody Seagraves interests when they were operating in that vicinity?

A. Yes, we did.

Q. And the Saxet Company, when they were operating in the vicinity of Corpus Christi?

A. Yes.

Q. What was the extent of that work?

[fols. 1621-1627] A. Chiefly in estimating of reserves. At the time we came to this area, the Saxet Company was an operating company.

Q. Mr. Fowler, from your experience in the construction and operation of gas companies—. Well, you use gas don't you?

A. In my home?

Q. Yes.

A. I do.

Q. You have been a user of gas where you have lived and in the different communities where you have worked?

A. Yes.

Q. Now, from your experience, Mr. Fowler, in the gas business, I will ask you your opinion as to whether or not a reduction of gas to the consuming public, the residential consumers, a reduction of the price—or just to get it to save time, perhaps—say from 67½ cents net per thousand cubic feet to 55 cents net per thousand cubic feet; would that reduction in your opinion result in an increased use of gas?

A. It would.

* * * * * * *

[fols. 1628-1631] Questions by Mr. Bobbitt:

Now, to get back to the question, Mr. Fowler, whether or not a reduction of say, 18 percent.

The Court: A reduction of what?

Q. That is the difference between 67½ cents and 55 cents.

The Court: That is not the question.

Q. I know that, but I was trying to take a short cut on it. Now, I believe I asked you and you answered the question, that in your opinion it would result in an increased use of gas?

A. In my opinion, it would.

* * * * * * *

[fol. 1632] Q. I will ask you, Mr. Fowler, whether or not in your opinion a reduction of gas rates of 18 percent, or 18.5 percent, and that is the difference in 67½ cents net per thousand cubic feet and 55 cents net per thousand cubic feet, in the City of Laredo, would result in a larger use of gas by existing gas users? Whether the reduction would result in a larger use of gas, in your opinion.

Mr. Coates: The same objection.

[fols. 1633-1646] A. You mean the present customers using a larger volume?

Q. Yes.

Mr. Coates: The same objection.

A. I think it would.

Q. In your opinion, would there be a larger number of customers to use gas, as the result of that reduction in gas rates?

A. I think so.

* * * * * * *

[fol. 1647] Testimony of JOHN S. IVY

Cross-examination.

Questions by Mr. Bobbitt:

Q. Mister—What is your name?

A. Ivy.

Q. Mr. Ivy, as far as planning is concerned, you plan taking gas from wherever you can get it at the lowest price possible?

A. Well, in my planning I don't take into consideration price at all. I think in terms of volumes.

Q. You don't care anything about the price?

A. Well, as far as my personal business is concerned, why, price doesn't enter into it.

Q. You speak about the wells being dead in the 3,000 foot [fol. 1648] sand up there. That is just the wells that have been drilled—the few wells that have been drilled to that depth, isn't it?

A. Well, there are eight wells that have been drilled, scattered over the field, and they have all gone dead, and the horizon is generally recognized as being depleted.

Q. Some of them have gone dead, and some have come to life, haven't they?

A. Not in that horizon.

Q. Well, they have in other horizons, haven't they?

A. In some of the other horizons, for instance, in the 2,000 foot Mirando sand there have been some wells that have gone dead, but in that horizon they have been deepened to 2200.

Q. Well, you are taking gas from the Carolina-Texas Field, aren't you, from wells that were producing some time ago and then stopped which have come to life and are producing a large flow?

A. No, they didn't come to life of their own accord.

Q. I understand.

Mr. Coates: Let the witness finish his answer.

A. The wells that were abandoned were deepened to other horizons. In one or two—in a few cases it has been possible to go back into wells and clean them out and lower them, so they would be able to produce a little longer; but in those cases there has not been any significant amount of [fol. 1649] gas produced after the reworking jobs, other than the deepening.

Q. Yes. You didn't plan to take gas from the Fansler Field down there until they discovered it, did you? You didn't have any plans in that direction, did you?

A. Of course, our work all the time contemplates the development of new reserves that are not now discovered, and, of course, we can't count potentialities into a reserve pecture until the case is actually in sight.

Q. I understand; but I believe you testified that all you are giving is an estimate and your opinion and judgment about that?

A. Exactly, yes, sir.

Q. And there may be ten times as much gas in that area as you now have, so far as you know?

A. Yes, sir, that is true.

Q. There may be ten times as much?

A. That is perfectly true.

Q. Your concern has gas holdings and leases and connections in the Refugio, Victoria, Louise, Conroe, and other fields in that vicinity, haven't you?

A. We have——

The Court: Wait a minute. What is that question?

Mr. Bobbitt: I asked him if they didn't have large gas [fol. 1650] reserves and connections, taking gas from Victoria and other points down in that vicinity, or Victoria and Conroe.

The Court: You don't mean Conroe is in that vicinty, do you?

Mr. Bobbitt. I am talking about the Conroe vicinity. I didn't get through asking my question, if the Court please.

The Court: Go ahead; I thought you had.

Mr. Bobbitt: No, sir.

A. We have over in the Corpus Christi district and on east over to Houston; we have gas reserves in the White Point and the Saxet Fields——

Q. And Refugio?

A. And the Refugio Field.

Q. And Victoria?

A. The Greta Field——

Q. The Victoria Field——

A. I will take them in order, if you don't mind, so I won't overlook any of them.

Q. All right.

A. The Greta Field, the Victoria Field, the Edna Field, and the Conroe Field.

Q. In the Conroe Field, you have large reserves there?

A. Yes, I would say they are large.

[fol. 1651] Q. And it is your business to keep reserves behind supply?

A. Exactly.

Q. Well, now, Mr. Ivy, if you take the supply of gas from the fields you have just last mentioned and supply these markets in Houston and other points that you are now supplying, you wouldn't be depleting the Carolina-Texas reserves would you?

A. No, but I don't know that the movements are of that order.

Q. Well, I am just asking the question.

A. In fact, I don't know of any gas that is now moving east through our facilities from the Carolina-Texas Field or the Jennings Field.

Q. Well, your concern is taking—you have two transmission lines running out of the Carolina-Texas Field to San Antonio, haven't you?

A. No, sir.

Q. You have how many?

A. We don't have any line running out of the Carolina-Texas Field to San Antonio. We do have this physical tie from the Carolina-Texas Field over to a point north of our Bruni Compressor Station in the Cole Field.

Q. Well, your concern is taking gas out of the Carolina-Texas-Bruni Fields and Supplying San Antonio and New Braunfels and Austin, and other points in this vicinity, aren't you?

[fol. 1652] A. Well, those fields are separate and distinct fields, Mr. Bobbitt.

Q. Well, you are taking gas from those fields and supplying it up here, aren't you?

A. We are not taking gas, in so far as I am aware, from the Carolina-Texas Field and moving it into the San Antonio market.

Q. Well, are you taking it from the——

A. The gas that is moving into the San Antonio market is being obtained in the Cole and Bruni Field, roughly outlined here (indicating on map).

Q. Yes.

A. And part of it flows up the line indicated there, through the twelve inch line, and the other part flows out northeast through the fourteen inch line, where additional gas is obtained from the Agua Dulce Field——

Q. Yes.

A. And from the Sandia Field en route to San Antonio; and also there is gas into the San Antonio market that comes out of the Refugio area at times.

Q. All right; are you through?

A. Yes sir.

Q. All right. You are taking gas, as you have testified, from the Bruni Field or the Carolina-Texas Field?

A. Not the Carolina-Texas Field.

Q. Well, say, the Bruni, and you are furnishing the [fol. 1653] Houston market.

A. No, sir.

Q. You are not taking gas out of the Bruni Field and furnishing the Houston market?

A. No, sir.

Q. Where do you take that gas to?

A. The Houston gas fields?

Q. Where are you taking the gas to from the Bruni Field through those lines? That is what I am asking you.

A. To San Antonio.

Q. Where else?

A. That is the only place it flows to.

Q. And it comes on up to New Braunfels and Austin, doesn't it?

A. Oh, yes. I had in mind the San Antonio market.

Q. Yes. The Houston Pipe Line Company has a large transmission line running out of the Carolina-Texas or the Bruni Field to Houston, have they not?

A. Yes, sir; and they move gas eastward into the Houston market from Carolina-Texas.

Q. Taking large volumes?

A. I don't know just what their daily rate is, but the production I gave a while ago for 1933.

Q. Now, this supply down here that you say in the Jennings Field that you are counting on furnishing Laredo with, you are sending—nearly all the gas you are taking [fol. 1654] you are sending that to Mexico, aren't you, and down the Valley.

A. The principal gas movement to Mexico is from the Martinez area at this time and from two wells in the Jennings Field.

Q. Yes, sir.

A. But those wells and the gas there is also available for Laredo.

Q. You have testified at some length here about keeping reserves behind supply, and the building of a large number of pipe lines, based on your estimate of the reserves. Now, isn't it true Mr. Ives——

Mr. Coates: Ivy.

Q. Mr. Ivy—I beg your pardon—that the construction—how many transmission lines have we out of this Jennings, Bruni, Carolina-Texas gas area to San Antonio, Houston, the Valley, Mexico, and other points, if you know?

A. Well, out of this Laredo district there is the Houston Pipe Line Company's line, which runs eastward, and the Houston are-, and the—our various lines which run to San Antonio and serve Austin and this immediate San Antonio-Austin area, and our line that runs down to Mexico and serves the City of Monterrey and its environs, or area, and the Rio Grande Valley line, which starts in the Henne-Winch Fariss Field, also know-as the Jim Hogg Field, and extends down to Brownsville.

[fol. 1655] Q. The construction and building of those numerous transmission lines, you have testified about indicates that the people recommending their construction had known there were a lot of gas reserves in that field, didn't they—isn't that true?

A. There is no doubt about that, or they would not have gone to that expense.

Q. And the construction of some of those lines was based on your judgment and estimate, wasn't it?

A. Only in a minor way, in this district.

Q. In a minor way?

A. Yes, sir.

Q. All of those lines you have testified about have been constructed subsequent to the original Laredo lines, haven't they?

A. Now, just which lines do you refer to, Mr. Bobbitt?

Q. All that you have testified about—those transmission lines.

A. Well, I have testified about a lot of transmission lines, located in Montana, Pennsylvania, and Louisiana.

Q. Well, I am talking about the Laredo district.

A. In this district?

Q. Yes.

A. What is your question?

Q. All of those transmission lines have been constructed subsequent to the Laredo line?

[fol. 1656] A. Yes, sir, that is my understanding.

Q. Yes, sir. Now, Mr. Ivy, just where did you deliver the 43.56 per cent of the more than one billion cubic feet of gas in 1933 taken from the Carolina-Texas Field?

A. As I understand it, why, it is all moved into the Laredo markets, but I can't testify to the detailed movements of gas through our pipe lines.

Q. You say to the Laredo markets?

A. Yes, sir.

Q. You testified, as I understand it, that there was more than a billion cubic feet of gas taken out of the Carolina-Texas Field in 1933.

A. That is right.

Q. And that your company delivered 43.56 per cent?

A. 43.39, Mr. Bobbitt.

Q. All right. All right, now, where did you send that gas?

A. Well, that gas moved out of the Carolina-Texas Field, and it is my information that it moved into what I term the Laredo markets, which includes all of the Oilton—all of these markets in here (indicating), and thence on into Laredo, and also including the Nuevo Laredo sales; but I am not able to testify in detail as to those movements.

Mr. Bobbitt: I believe that is all, Mr. Ivy.

* * * * * * *

[fol. 1657] Q. There is a whole lot of territory down there in that country that has not been explored yet, isn't there, Mr. Ivy?

A. There certainly is.

Q. Yes, sir. All right.

Mr. Bobbitt: That is all.

Mr. Coates: That is all.

The Court: Stand aside, Mr. Ivy.

(Witness excused.)

[fol. 1658] R. H. Hargrove, a witness for the defendant, upon being recalled, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Your name is R. H. Hargrove?

A. Yes, sir.

Q. You are the same R. H. Hargrove that has already been sworn and testified?

A. Yes, sir.

Q. And I believe you testified that you were Vice-President, in charge of production and transmission for United Gas Public Service Company and affiliated companies?

A. Yes, sir.

Q. And of all of the transmission system operations and production system operations of those companies in five states?

A. Yes, sir.

Q. Now, Mr. Hargrove, during 1933 under your direction was a considerable amount of work done in reconditioning what has been referred to in this record as the Jennings-Pescadito line?

A. Yes, sir.

Q. Do you know in a general way on what part of that line that reconditioning work was done—that is, whether on the upper or lower or middle part?

[fol. 1659] A. Well, it was slightly south of the middle section, as I recall it, that the principal work was done.

Q. And what was the occasion for doing that work, Mr. Hargrove?

A. The pipe was in bad condition, and it was necessary to put new pipe in and recondition some sections of the old pipe and replace it.

Q. Why.

A. It had developed an excessive number of leaks at primarily two hot spots in the line.

Q. And what was your purpose in spending this money to get that line back in good condition?

A. To have it in first-class condition to serve the Laredo market through it.

Q. And was that why that money was spent?

A. Yes, sir.

Q. Now, Mr. Hargrove, do you contemplate any further work on that line during 1934?

A. Yes, sir, we plan to recondition about four miles up at the north end of the line, a short distance south of the check meter as shown on that map. We are, in fact, starting on that work now; some of the pipe is on the ground, I believe.

Q. Why are you doing that work?

A. For the same reasons as stated why we did the work in 1933.

Q. And when that work is done what, in your judgment, [fol. 1660] will be the condition of that line?

A. It will be in very satisfactory working condition, in my opinion.

Q. Mr. Hargrove, it has been testified here that the purchase price of gas in the Carolina-Texas Field during 1933 was approximately 4.25 or 4.30 cents per M. C. F. at the well-head. Is the price paid to the well owner for gas delivered at the well-head the only expense that United Gas Public Service Company, as purchaser of that gas, incurs in connection with and reflected in the cost of purchased gas?

A. No, sir, we have an added expense incident to the maintaining of reserves for the system and exploratory work in connection therewith, that is an actual expense over and above the actual amount paid the well owner.

Q. And why don't you just simply rely on independent well owners drilling you wells as you need them and buying all your supply—your gas, instead of keeping on hand reserves yourself and doing exploratory work?

A. The ordinary form of contract under which gas is purchased at the well imposes no obligation on the well owner other than to deliver such gas as he may have available for delivery; he has no obligation to acquire additional reserves, to drill additional wells, or even to recondition the wells that are already drilled, and obviously we can not rely upon a continued service upon such a condition as that. We have to be in a position to meet the demands [fol. 1661] of the public by maintaining large reserves of our own that we are in a position to develop as a new occasion arises.

Q. And if you shouldn't do that, and should wait until about the time that the supply from the existing wells was depleted before going out and acquiring gas reserves and getting gas in sight, what would be the situation with respect to serving the company's markets?

A. We might not be able to get it at that time, and the company's markets would be without gas, and our business would be gone.

Q. In your judgment and with respect to the Carolina-Texas Field, does the over-all price of five cents per M. C. F., to represent the cost of purchased gas as distinguished from the purchase price of gas from the independent well owner, represent a very close approximation of the cost of purchased gas?

A. Yes; we ordinarily figure that we have about a twenty-five per cent increase over the actual purchase price to represent the other cost to us.

Q. And does it work out that way?
A. Yes, sir, in practice it does.

Mr. Coates: I believe that is all Mr. Hargrove.

Cross-examination.

Questions by Mr. Bobbitt:

Q. What position do you say you hold with the United [fol. 1662] Gas Public Service Company?
A. Vice-President in charge of the production and transmission operations.
Q. Vice-President in charge of the production and transmission operations?
A. Yes, sir.
Q. Well, what is Mr. Abernathy? I thought he was in charge of the transmission operations.
A. Mr. Abernathy is Superintendent of transmission operations, which is—in his duties he reports to me.
Q. Oh, you are in charge of the transmission operations and he is superintendent?
A. Yes, sir.
You don't have anything to do with the operations down there in the field, do you?
A. Well, all problems arising from them of any importance are referred to me for decision.
Q. He reports to you?
A. Yes, sir.
Q. And you decide them?
A. Yes, sir.
Q. Are you connected with—do you give all of your time to the United Gas Public Service Company or are you connected also with the Electric Bond and Share Company?
A. No.
Q. Which gives certain services to this——
[fol. 1663] A. No, my sole affiliations are with the United Gas Public Service Company and its affiliated companies.
Q. Mr. Abernathy reports to you about those things, and you report to Electric Bond and Share Company, don't you?
A. No, sir, I do not.
Q. Don't you report to one of these sponsors of production or transmission?

A. No, sir, we do not—I do not. The sponsor spends some time on our properties and confers and advises on different problems. I report to the President of the Company and the Board of Directors.

Q. The sponsor counsels with you?

A. And the other officers of the Company.

Q. And the other officers of the Company, and with Mr. Abernathy?

A. Occasionally.

Q. And then after he gets through, then he reports, of course, to his principals in New York?

A. I presume he keeps them advised.

Q. Well, don't you know that?

A. Yes, sir, I know that he does.

Q. Yes, sir. Mr. Hargrave, is it?

Mr. Coates: Hargrove:

A. Hargrove.

Q. Mr. Hargrove, when did you start your work with [fols. 1664-1665] the United Gas Public Service Company?

A. With its predecessor company on January 1, 1928.

Q. January 1, 1928, and have been with them all the time?

A. Yes, sir.

Q. With headquarters in Houston?

A. In Shreveport until about the middle of 1930, and since then in Houston.

Q. Mr. Hargrove, when did you start reconditioning that Jennings Pescadito transmission line that you testified about?

A. Well, the first work of any major importance since I have been in charge of it was in 1933, I believe.

Q. 1933 is when you started reconditioning it?

A. Yes, sir.

* * * * * * *

[fol. 1666] Q. How many gas wells in the Carolina-Texas field are there producing gas and available for delivery that are not hooked up?

A. I don't know, offhand, Mr. Bobbitt.

Q. You don't know.

A. I only know of two—the two Rosenberg wells.

Q. Aren't there quite a number of independents not

hooked up to any line, and ready to serve, and they can not get their gas taken by your concern or any other one there?

A. Absolutely not. We are willing to take any gas from anybody in that field on an average price and taking it on a ratable basis.

Q. What is the average price up there?

A. Four cents is what I had in mind; I believe it figures slightly in excess of that.

Q. Slightly in excess of four; and down at Jennings it is three cents?

A. I think you have in mind what Mr. Ivy called the Martinez field; it is three cents there, I believe.

[fols. 1667-1687] Q. The Martinez and the Escobas are the same field?

A. Yes.

* * * * * * *

[fol. 1688] Testimony of J. A. Phillips

Q. Mr. Phillips, did you hear or else read the testimony of Mr. Lewis with respect to Voucher J-10-157, wherein Mr. Lewis gave testimony to the effect that such voucher reflects that United Gas Public Service Company when it acquired the properties of South Texas Gas Company had recorded the value of these properties on its books at approximately $934,000.00?

A. Yes; I heard some of Mr. Lewis's testimony in respect to that journal voucher and I read the record in respect to all of his testimony in reference to journal Voucher 10-157.

Q. Have you examined the original of this voucher?

A. I have.

Q. Have you likewise examined the balance sheet of South Texas Gas Company just prior to its merger with United Gas Public Service Company?

A. Yes; I examined the balance sheet of that company showing its condition just prior to the merger.

Q. What conclusion did you reach from the examination of this voucher J-10-157?

A. Well, I reached the conclusion by very casual exami-[fol. 1689] nation of the voucher that it certainly had to do with properties and values not actually recorded on the

voucher. First of all, the voucher records the cancellation of capital stock. It sets out a reacquisition of bonds; and it suggests by the nature of the voucher that in merging the assets of the South Texas Gas Company with the assets of the United Gas Public Service Company——

Mr. Bobbitt: Pardon me, but——

The Court: The witness says the voucher suggests such and so to his mind.

Mr. Bobbitt: You are just testifying what this voucher suggests to you as to what they meant to convey?

A. I am testifying, using accounting terminology, that that is what the voucher itself suggests to any accountant; that is my testimony.

Mr. Bobbitt: I just wanted to get things straightened out.

A. I may repeat, because I don't remember just where I had gotten. But the voucher itself makes reference to the cancellation of capital stock, and to the reacquisition of securities, all of which would make plain to an accountant that there were other assets back of the picture than the particular assets referred to in Mr. Lewis' testimony. It is difficult to understand how otherwise you could bring about the cancellation of the number of shares of stock the voucher discloses.

[fol. 1690] The Court: That is getting into an argument, I think.

Q. From your accounting experience, and your knowledge of proper and accepted and approved accounting principles, is it your judgment and your testimony that this voucher reflects the recording by United Gas Public Service Company on its books of the value of the properties of South Texas Gas Company at any such amount as $934,000.00?

A. No; it does not disclose that to me.

Q. On the other hand, does it disclose that the value of those properties were recorded on the books of the United Gas Public Service Company at an amount greatly in excess of $934,000.00?

A. An examination of the support to the voucher clearly reflects that there were values most substantially in excess of the item of $934,000.00 plus.

Q. Can you state the total values as reflected by the voucher which were involved?

Mr. Bobbitt: We object to——

The Court: I think you had better cut out the words "as reflected", and say "his opinion".

Mr. Bobbitt: The voucher is the best evidence of what it reflects.

The Court: Yes; I think so.

Q. From your examination of that voucher, Mr. Phillips, what value of the South Texas Gas Company's properties does it reflect?

[fol. 1691] Mr. Lange: In his opinion.

Q. In your opinion, based on the examination of the voucher?

A. I would first say this: That vouchers of this character are summarizations of a transaction that is complete, and it is rarely ever true that a voucher contains all the pertinent facts. I am speaking now as an accountant——

The Court: Just answer the question.

A. What was the question?

(Thereupon the following question was read to the witness: "Q. From your examination of that voucher, Mr. Phillips, what value of the South Texas Gas Company's properties does it reflect, in your opinion, based on the examination of the voucher?")

A. The voucher itself does not reflect the value of the properties, or the value at which they were carried on the Company's books.

Q. Does the examination of the voucher, plus the examination of the books, records, and accounts underlying, in support of the voucher, reflect the values?

Mr. Lange: In his opinion?

The Court: Yes.

Mr. Coates: He is testifying as to figures. He is not giving opinion evidence. He is testifying as to figures shown on the record.

The Court: All right.

A. What was the question again?

(Thereupon the Reporter read the following question: "Q. Does the examination of the voucher, plus the exami-[fol. 1692] nation of the books, records, and accounts underlying, in support of the voucher, reflect the values?")

A. Yes.

Q. Can you state what those values were which were reflected by the voucher, plus the records, books and accounts of the South Texas Gas Compay, involved in that merger?

Mr. Lange: The voucher speaks for itself, as to what the voucher and its supporting records reflect. Now, if in his opinion, he believes they reflect something else, but the voucher is in writing and the books and voucher are the best evidence.

The Court: Yes, sir; the voucher and books are the best evidence and speak for themselves.

Mr. Coates: The procedure in cases of this sort, and that which has been followed here, as I understand it, is that where a company of this character is under examination, and where the books of accounts of that company have been opened as they have here, and they have been given full access to those books, then, under the procedure in rate cases, one who has examined those books may come and testify from them without getting a few trucks and bringing all the books up here.

The Court: That is clearly true, but that is not quite the situation here. You asked him a question. They insisted that he was giving his opinion, and you said, "no", that it is a fact, and I said he could state as a fact what it shows. Now, when you ask him a question and use the word "re-
[fol. 1693] flects", they the make the objection that it is a fact question, and that the voucher and books are the best evidence, and I cannot waive that rule because that is a rule of law.

Mr. Coates: Note our exception.

Q. From your examination of this voucher and the books, what value is shown, in your opinion, based on your examination, is given, to the properties and assets of South Texas Gas Company involved in that transaction?

A. In my opinion, the properties and assets are valued as follows: Investments and Capital Stock and Bonds, Loans and Advances, $7,892,061.10.

Mr. Bobbitt: What is that figure?

A. $7,892,061.10. Another asset representing the excess of *of* the investment for South Texas Gas Company in Texas Border Gas Company at the date of the merger, $113,912.70; Book value of plant and property, $2,788,-

651.24; Cash Receivables, Material and Supplies, and so forth $75,884.75; representing the assets, in my opinion, that were merged with the purchasing company, in connection with this voucher.

The Court: I would like to see that sheet, with those figures, there, please.

(Witness hands Court sheet.)

Q. Give the total figure, Mr. Phillips.

A. $10,870,509.79.

[fols. 1694-1714] Q. Reflecting the total assets of the South Texas Gas Company at that time?

A. In my opinion reflecting the total value of the assets of the South Texas Gas Company that were merged with the purchasing company at this time.

* * * * * * *

[fol. 1715] March 30, 1934

Cross-examination.

Questions by Mr. Bobbitt:

Q. Mr. Phillips, you were just recently employed in connection with the examination of these books and records of the United Gas Public Service Company?

A. I was just recently employed by the United Gas Public Service Company.

Q. Yes, sir; that is, a week or ten days ago?

A. About that time—about March 20, 1934.

Q. Yes, sir.

Mr. Bobbitt: I believe that is all, Mr. Phillips.

* * * * * * *

[fols. 1716-1717] (Testimony closed at 3:30 o'clock p. m., March 30, 1934.)

[fols. 1718-1764] [File endorsements omitted]

* * * * * * *

[fol. 1765] Plaintiffs' Exhibit No. 2, of which the following is a true and correct transcript, was offered in evi-

dence during presentation of Preliminary Matters and was introduced by plaintiffs and identified as shown on page 11, volume I, of this Statement of Facts and Transcript.

[fol. 1766] PLAINTIFFS' EXHIBIT No. 2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

In Equity. No. 466

THE STATE OF TEXAS et al.

v.

UNITED GAS PUBLIC SERVICE COMPANY

Order Remanding to State Court

The motion of the plaintiffs to remand the above entitled cause to the Fifty-third District Court of Travis County, Texas, having been argued, heard and considered, it is Ordered that said motion be and the same is granted and that this cause be and the same is hereby remanded to the Fifty-third District Court of the State of Texas in and for the County of Travis for further proceedings.

It is further considered by the court that the plaintiffs [fols. 1767-1769] have and recover of the defendant their costs incurred in this court for which execution is awarded; to which judgement of the court the defendant then and there excepted.

Dated 18th day of September 1933.

Robert J. McMillan, Judge.

[fol. 1770] Plaintiffs' Exhibit No. 4, of which the following is a true and correct transcript was offered in evidence while the Witness Leon O. Lewis was testifying and was introduced by plaintiffs and identified as shown on page 778, volume I, of this Statement of Facts and Transcript.

[fol. 1771] PLAINTIFFS' EXHIBIT No. 4

United Gas Public Service Company

Historical Cost of Fixed Capital

Old South Texas Gas Company and Texas Border Gas Company Systems

Excluding Jennings to Roma Transmission System Property

Historical Cost per Books:		
Historical Cost of Fixed Capital Transferred from South Texas Gas Company and Texas Border Gas Company October 21, 1932		$1,049,735.38
Additions: October 21, 1932 to December 31, 1932		
General Property		1,400.68
Transmission System Property:		
Enlarge Portion Main Line Jennings to Pescadito Jct.	$14,387.45	
Recondition 6" and 8" Lines Laredo Area...	87,709.47	
		102,096.92
Balance—December 31, 1932		$1,153,232.98
Year Ended December 31, 1933:		
Additions	$3,747.14	
Retirements	4,986.47	
Net Retirements		1,239.33
Historical Cost of Properties December 31, 1933		$1,151,993.65
Retirement Reserves:		
Accrued Book Reserves on Properties Transferred 10-21-32...		$499,707.47
Add: Provision for Period—October 21, 1932, to December 31, 1933 Computed at 3%		41,295.97
		$541,003.44
Less:		
Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Balance Accumulated Reserve, December 31, 1933		$508,498.15
Retirement Reserves Adjusted to 3%:		
Adjusted Reserve at July 31, 1932		$126,559.13
Add: Provision for Depreciation for Period from October 21, 1932, to December 31, 1932		41,295.97
		$167,855.10
Less: Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Reserve—December 31, 1933—Adjusted to 3%		$135,349.81

(Here follows one paster, side folio 1772)

[fol. 1772]

Border Gas Company, Texas Border Gas Company & South Texas Gas Company

Historical Cost of Fixed Capital as Shown by Books*

Year	Historical Cost Per Books: Additions	Retirements	Net Additions	Accumulated Additions	Depreciation Per Books: Provision for Depreciation Charged To Operations	Less Charges To Reserve	Less Retirement Expense Charged To Operations	Accumulated Depreciation Per Company Books	Adjusted Depreciation: Depreciation at 3%	Accumulated Depreciation at 3%
Border Gas Company:										
1910 Construction	$166,996.68	.....	$166,996.68	$166,996.68	.....	.....	.....	.....	.....	.....
1911 1- 1-11 to 12-31-11	29,241.36	$646.09	28,595.27	195,591.95	.....	.....	.....	.....	$5,438.83	$5,438.83
1912 1- 1-12 to 6-30-12	14,620.68	323.04	14,297.64	209,889.59	.....	.....	.....	.....	3,041.11	8,479.94
1913 6-30-12 to 6-30-13	13,003.21	174.09	12,829.12	222,718.71	.....	.....	.....	.....	6,489.13	14,969.07
1914 6-30-13 to 6-30-14	7,735.79	54.86	7,680.93	230,399.64	.....	.....	.....	.....	6,796.77	21,765.84
1915 6-30-14 to 6-30-15	5,737.40	1,825.71	3,911.69	234,311.33	$82,230.48	.....	$1,664.04	$80,566.44	6,970.68	27,072.48
1916 6-30-15 to 6-20-16	122,532.92	11,134.27	111,398.65	345,709.98	.....	.....	8,731.52	71,834.92	8,700.32	27,041.28
1917 6-30-16 to 6-30-17	7,083.12	23,077.29	15,994.17(†)	329,715.81	.....	.....	19,318.90	52,516.02	10,131.39	17,853.77
1918 6-30-17 to 6-30-18	15,069.85	5,069.23	10,000.62	339,716.43	24,363.76	.....	1,707.79	75,171.99	10,041.48	26,187.46
1919 6-30-18 to 6-30-19	14,643.45	.....	14,643.45	354,359.88	36,380.98	.....	797.99	110,754.98	10,411.14	35,800.61
1919 6-30-19 to 12-31-19	10,579.25	.....	10,579.25	364,939.13	18,833.44	.....	1,718.91	127,869.51	5,394.74	39,476.44
1920 1- 1-20 to 12-31-20	17,160.54	.....	17,160.54	382,099.67	33,869.06	$483.44	182.99	161,072.14	11,205.58	50,015.59
1921 1- 1-21 to 12-31-21	12,452.82	.....	12,452.82	394,552.49	32,319.67	2,168.77	1,727.84	189,495.20	11,649.78	57,768.76
1922 1- 1-22 to 12-31-22	179,713.71	.....	179,713.71	574,266.20	40,326.61	873.02	653.22	228,295.57	14,532.28	70,774.80
1923 1- 1-23 to 12-31-23	141,584.26	13,085.96	128,498.30	702,764.50	52,921.93	7,718.91	8,870.93	264,627.66	19,155.46	73,340.42
1924 1- 1-24 to 12-31-24	73,489.21	.....	73,489.21	776,253.71	61,341.64	5,712.71	1,191.53	319,065.06	22,185.28	88,621.46
1925 1- 1-25 to 12-31-25	131,192.98	.....	131,192.98	907,446.69	69,856.79	3,700.11	3,561.41	381,660.33	25,255.50	106,615.44
1926 1- 1-26 to 12-31-26	56,161.43	.....	56,161.43	963,608.12	77,644.23	673.13	537.05	458,094.38	28,065.82	133,471.08
1927 1- 1-27 to 12-31-27	34,307.27	9,056.79	25,250.48	988,858.60	81,514.07	21,589.20	1,108.09	516,911.16	29,287.00	140,060.79
1928 1- 1-28 to 4-10-28	26,366.02	8,712.49	17,653.53	1,006,512.13	23,001.68	8,471.63	85.50	531,355.71	8,314.05	139,817.71
Total Book Cost of Properties Transferred to South Texas Gas Company	$1,079,671.95	$73,159.82	$1,006,512.13	$1,006,512.13	$634,604.34	$51,390.92	$51,857.71	$531,355.71	$243,066.34	$139,817.71
South Texas Gas Company (S) & Texas Border Gas Company (T)										
1928 4-10-28 to 12-31-28 (S).	$15,287.70	$3,157.12	$12,130.58)		$15,414.40	$1,284.00)				
(T).	31,592.93	7,423.89	24,169.04)	$1,042.811.75	8,408.95	5,090.25)	$.....	$548,804.81	$22,183.92	$155,627.38
1929 1- 1-29 to 12-31-29 (S).	4,429.94	3,774.02	655.92)		21,558.83	158.32)				
(T).	21,044.84	8,320.71	12,724.13)	1,056,191.80	11,947.44	1,205.43)	.....	580,947.33	31,485.05	185,748.68
1930 1- 1-30 to 2-28-30 (S).	8,707.60	.....	8,707.60)		3,793.33	.....)				
(T).	3,275.69	643.50	2,632.19)	1,067,531.59	2,046.39	.....)	.....	586,787.05	5,309.31	191,057.99
1930 3- 1-30 to 6-30-30 (S).	3,870.57	.....	3,870.57)		6,551.26	.....)				
(T).	7,374.03	205.21	7,168.82)	1,078,570.98	3,319.67	.....)	.....	596,657.98	5,430.51	196,488.50
1931 7- 1-30 to 6-31-31 (S).	35,147.77	15,858.80	19,288.97)		11,999.60	269.90)				
(T).	28,394.51	4,183.04	24,211.47)	1,122,071.42	4,715.78	1,501.63)	.....	611,601.83	33,099.64	227,726.61
1932 7- 1-31 to 7-31-32 (S).	12,931.70	133,555.68	120,623.98)**(†)		8,877.21	132,886.70)				
(T).	40,092.11	1,100.86	38,991.25)	1,040,438.69	19,538.10	2,319.72)	.....	504,810.72	36,799.86	129,320.05
1932 8- 1-32 to 10-21-32 (S).	13,728.01	6,469.67	7,258.34)		1,227.41	6,143.17)				
(T).	5,229.80	3,191.45	2,038.35)	1,049,735.38	4,058.93	4,246.42)	.....	499,707.47	7,628.67	126,559.13
Total Book Cost of Properties Transferred to United Gas Public Service Company	$1,310,779.15	$261,043.77	$1,049,735.38	$1,049,735.38	$758,061.64	$206,496.46	$51,857.71	$499,707.47	$384,913.30	$126,559.13

*Note.—Additions Identified as Pertaining to Transmission Line from Jennings to Roma Eliminated.

**Note.—Transmission Lines Retired, New Lines not yet Charged into Capital Account, Depreciation Computed on Full Beginning Balance. The Adjusted Computations for Depreciation are Inaccurate to the Extent that Land, Organization Costs, and Rights of Way are Included in the Computation.

† Red in copy.

[fol. 1773] Plaintiffs' Exhibit No. 5, of which the following is a true and correct transcript was offered in evidence while the Witness Leon O. Lewis was testifying and was introduced by plaintiffs and identified as shown on page 797, volume I, of this Statement of Facts and Transcript.

[fol. 1774]

PLAINTIFFS' EXHIBIT No. 5

Border Gas Company, Texas Border Gas Company and South Texas Gas Company

Comparative Statement of Earnings

For the Seven Year Period Ended December 31, 1931

	Border Gas Company			*Border Gas to 4-10-28 Texas Border and South Texas to 12-31-28	Texas Border Gas Comapny* and South Texas Gas Company		
Operating Revenues:	1925	1926	1927	1928	1929*	1930*	1931*
Gas Sales	$355,305.32	$394,649.89	$343,667.22	$365,046.74	$385,520.48	$393,528.78	$305,434.58 A
Forfeited Discounts	5,898.54	7,310.69	9,190.13	9,741.74	10,548.18	11,555.81	.....
Other Operating Revenues	3,224.30	5,789.29	5,722.63	2,049.74	2,265.32	2,436.00	2,317.30
Total Operating Revenues	$364,428.16	$407,749.87	$358,579.98	$376,838.22	$398,333.98	$407,520.59	$307,751.88
Operating Expenses:							
Gas Purchases	$137,041.67	$136,411.81	$108,197.89	$80,309.28	$76,360.89	$76,598.60	$47,507.45
Transmission and Distribution Operations	19,146.90	22,144.21	23,832.67	25,679.64	25,630.23	32,572.96	23,650.31
Transmission and Distribution Maintenance	11,346.79	10,717.37	10,653.31	10,143.41	7,524.98	13,117.14	20,308.23
General Expense	28,135.18	32,416.14	26,723.93	41,965.87	73,072.18	55,041.83	61,364.73
Taxes—Other than Income	9,845.02	15,483.12	11,386.29	10,172.09	14,968.86	17,240.10	17,959.05
Total Operating Expenses	$205,515.56	$217,172.65	$180,794.09	$168,270.29	$197,557.14	$194,570.63	$170,789.77
Net Return Before Providing for depreciation or Federal Income Tax	$158,912.60	$190,577.22	$177,785.89	$208,567.93	$200,776.84	$212,949.96	$136,962.11

*Operations of Monterrey Line Eliminated from Revenues and Expenses of South Texas Gas Company in Consolidating Operations with Texas Border Gas Company.

A—1931 Gas Sales include Forfeited Discounts.

(Here follows one paster, side folio 1775)

[Vol. 1775]

Border Gas Company

Statement of Earnings from January 1, 1911 to December 31, 1924

	1-1-11 to 6-30-12	Fiscal Year Ended June 30th							7-1-19 to 12-31-19	Year Ended December 31st				
		1913	1914	1915	1916	1917	1918	1919		1920	1921	1922	1923	1924
Operating Revenues:														
Gas Earnings (Net)	$70,023.75	$59,537.98	$52,047.80	$45,923.73	$33,526.13	$49,962.91	$76,756.42	$91,361.83	$43,618.27	$133,472.78	$139,983.01	$148,689.03	$150,114.24	$179,304.95
Warehouse Earnings	.....	.....	.....	3,459.85	16.79	1,738.18	1,105.68	1,705.37	2,229.41	3,889.45	1,579.86	1,494.52	.....	995.78
Other Operating Revenues	.....	.....	.....	10.74	341.71	248.76	84.33	.....	1,879.10	44.53	.....	77.03	74.23	198.17
Total Operating Revenues	$70,023.75	$59,537.98	$52,047.80	$49,394.32	$33,884.63	$51,949.85	$77,946.43	$93,067.20	$47,726.78	$137,406.76	$141,562.87	$150,260.58	$150,188.47	$180,498.90
Operating Expenses:														
Transmission and Distribution Operations	$9,419.79	$5,332.81	$4,688.58	$5,053.43	$5,531.00	$6,506.53	$6,428.87	$7,924.29	$4,769.62	$12,891.63	$15,431.05	$16,056.03	$19,281.78	$17,452.51
Transmission and Distribution Maintenance	1,060.22	955.67	6,854.69	809.95	5,760.56	13,846.66	7,833.70	10,039.45	2,659.83	6,047.97	5,109.93	7,731.71	14,010.11	14,277.41
General Expense	11,152.14	7,909.39	7,029.36	8,210.90	9,319.13	10,197.93	11,970.32	13,559.38	7,698.83	17,845.76	19,804.66	22,891.85	24,260.95	24,930.11
Taxes	2,205.70	1,728.76	2,438.77	2,205.72	2,444.63	1,948.97	2,151.49	2,083.72	1,874.36	3,900.25	8,817.26	9,310.95	18,018.95	6,250.13
Total Operating Expenses	$23,837.85	$15,926.63	$21,011.40	$16,280.00	$23,055.32	$32,500.09	$28,384.38	$33,606.84	$17,002.64	$40,685.61	$49,162.90	$55,990.54	$70,571.79	$62,910.16
Net Return Before Providing for Depreciation and Income Tax	$46,185.90	$43,611.35	$31,036.40	$33,114.32	$10,829.31	$19,449.76	$49,562.05	$59,460.36	$30,724.14	$96,721.15	$92,399.97	$94,270.04	$79,616.68	$117,588.74

[fol. 1776]

South Texas Gas Company

Statement of Earnings

From April 10, 1928 to December 31, 1931

	Apr. 10, 1928 to Dec. 31, 1928	Year Ended Dec. 31, 1929	Year Ended Dec. 31, 1930	Year Ended Dec. 31, 1931
Operating Revenues—				
Gas Sales to Texas Border Gas Co.	$148,501.37	$222,117.56	$222,649.56	$161,330.20
Gas Sales to Cia Mexicana de Gas	.....	2,790.30	233,446.50	192,162.46
Gas Sales to Right-of-Way Consumers	.....	.....	526.40	4,004.55
Total Operating Revenues	$148,501.37	$224,907.86	$456,622.46	$357,497.21
Operating Expenses—				
Gas Purchases	$48,766.83	$77,290.99	$161,598.15	$137,391.25
Transmission System Operations	4,029.93	6,233.18	20,219.78	19,282.40
Transmission System Maintenance	4,248.20	3,852.25	9,033.21	10,307.45
General Expenses	16,461.37	37,762.05	37,962.40	17,289.76
Taxes	1,818.56	4,063.05	9,281.22	9,577.86
Total Operating Expenses	$75,324.89	$129,201.52	$238,094.76	$193,848.72
Net Return on Invested Capital Before Providing for Depreciation	$73,176.48	$95,706.34	$218,527.70	$163,648.49

Note.—Gas Purchases Computed at 5¢ per 1000 MCF.

[fols. 1777–1784] Texas Border Gas Company]

Operating Revenues—				
Gas Sales	$233,476.66	$385,520.48	$393,002.38	$301,430.03*
Forfeited Discounts	7,611.64	10,548.18	11,555.81	.....
Other Operating Revenues	1,760.09	2,265.32	2,436.00	2,317.30
Total Operating Revenues	$242,848.39	$398,333.98	$406,994.19	$303,747.33

*Includes Forfeited Discounts.

Texas Border Gas Company

Statement of Earnings

April 10, 1928 to December 31, 1931

	Apr. 10, 1928 to Dec. 31, 1928	Year Ended Dec. 31, 1929	Year Ended Dec. 31, 1930	Year Ended Dec. 31, 1931
Operating Expenses—				
Gas Purchases	$148,501.37	$222,117.56	$222,649.56	$161,330.20
Distribution System Operations	14,341.19	19,397.05	23,370.94	14,874.89
Distribution System Maintenance	3,527.35	3,672.73	9,006.13	15,617.30
General Expenses	17,717.27	35,310.13	37,047.65	54,936.40
Taxes—Other than Federal Income	5,353.53	10,905.81	13,016.22	13,600.17
Total Operating Expenses	$189,440.71	$291,403.28	$305,090.50	$260,358.96
Net Return on Invested Capital Before Providing for Depreciation	$53,407.68	$106,930.70	$101,903.69	$43,388.37

[fol. 1785] Plaintiffs' Exhibit No. 8, of which the following is a true and correct transcript, was offered in evidence while the Witness Leon O. Lewis was testifying and was introduced by plaintiffs and identified as shown on page 821, volume I, of this Statement of Facts and Transcript.

[fol. 1786]

PLAINTIFFS' EXHIBIT No. 8

South Texas Gas Company—Texas Border Gas Company—United Gas Public Service Company

Consolidated Statement of Earnings From Operations Within the City Limits of Laredo for the Years Ended June 30, 1929, June 30, 1930, June 30, 1931, July 31, 1932, & December 31, 1933

	Consolidated South Texas Gas Company & Texas Border Gas Company				United Gas Public Service Company
	Year Ended June 30			Year Ended July 31,	Year Ended Dec. 31,
	1929	1930	1931	1932	1933
Operating Revenues:					
Gas Sales	$281,320.97	$319,473.23	$254,152.13	$192,349.13*	$157,199.62*
Forfeited Discount	7,899.28	8,451.06	7,176.81	.....	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,108.96	1,623.00
Total Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
Operating Expenses:					
Gas Purchases	$56,132.05	$62,233.89	$50,412.75	$22,551.10	$14,997.10
Transmission System Operation	4,473.46	8,779.63	4,727.45	3,167.15	2,511.69
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,757.74	1,645.39
Distribution System Operations	17,515.93	19,318.45	13,701.53	11,561.46	10,814.78
Distribution System Maintenance	3,773.79	5,554.47	8,290.11	12,506.66	4,609.09
Customers' Expense	.....	.....	8,618.47	15,367.28	14,145.74
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33	2,805.19
General Office and General Expense	41,520.51	50,577.60	25,117.95	29,884.60	27,876.42
Taxes—Other than Income Tax	10,619.67	14,341.39	15,550.53	12,738.30	13,893.06
Other Operating Expense	.....	.....	362.96	.....	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
Net Return Before Providing for Depreciation or Income Tax.	$149,452.24	$162,331.42	$129,347.66	$80,308.47	$65,524.16

* Note.—Includes Forfeited Discounts.

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[fol. 1787]

South Texas Gas Company

Statement of Earnings for the Year Ended June 30, 1929

	Total	Other Towns	Laredo		
			Total	Outside City	Inside City
Operating Revenues:					
Gas Sales	$211,067.98	$13,387.58	$197,680.40	$28,149.32	$169,531.08
Operating Expenses:					
Gas Purchases	$70,201.12	$3,504.88	$66,696.24	$10,564.19	$56,132.05
Transmission System Operations	5,594.62	279.17	5,315.45	841.99	4,473.46
Transmission System Maintenance	6,684.88	333.58	6,351.30	1,006.07	5,345.23
New Business Expense	733.29	46.49	686.80	97.82	588.98
General Expense	27,791.64	1,761.99	26,029.65	3,707.40	22,322.25
Taxes—Other than Income Tax	3,468.29	575.11	2,893.18	436.90	2,456.28
Total Operating Expenses	$114,473.84	$6,501.22	$107,972.62	$16,654.37	$91,318.25
Net Return Before Providing for Depreciation and Income Tax	$96,594.14	$6,886.36	$89,707.78	$11,494.95	$78,212.83

[fol. 1788]

South Texas Gas Company

Statement of Earnings for the Year Ended June 30, 1930

			Laredo District Lines			
				Laredo		
	Total	Monterrey Line	Other Towns	Total	Outside City	Inside City
Operating Revenues:						
Gas Sales	$329,350.51	$88,718.85	$16,624.54	$224,007.12	$31,294.95	$192,712.17
Operating Expenses:						
Gas Purchases	$114,034.02	$36,131.46	$4,236.58	$73,665.98	$11,432.09	$62,233.89
Transmission System Operations	15,566.71	4,576.61	597.76	10,392.34	1,612.71	8,779.63
Transmission System Maintenance	5,392.53	1,585.40	207.07	3,600.06	558.67	3,041.39
New Business Expense	690.62	186.05	34.88	469.69	65.61	404.08
Customers' Expense	89.47	24.10	4.52	60.85	8.50	52.35
General Expense	43,260.27	11,654.32	2,184.64	29,421.31	4,109.73	25,311.58
Taxes—Other than Income Tax	7,922.70	2,825.53	384.58	4,712.59	686.60	4,025.99
Total Operating Expense	$186,956.32	$56,983.47	$7,650.03	$122,322.82	$18,473.91	$103,848.91
Net Return Before Providing for Depreciation and Income Tax	$142,394.19	$31,735.38	$8,974.51	$101,684.30	$12,821.04	$ 88,863.26

[fol. 1789]

South Texas Gas Company

Statement of Earnings

For the Year Ended June 30, 1931

	Total	Misc. Sales	Monterrey Line	Laredo District		
				Other Towns	Laredo	
					Outside City	Inside City
Operating Revenues:						
Gas Sales	$499,302.09	$2,437.20	$304,742.25	$15,663.14	$30,539.69	$145,919.81
Operating Expenses:						
Gas Purchases	$168,938.85	$575.19	$101,051.05	$4,014.00	$12,885.86	$50,412.75
Transmission System Operations	18,416.23	53.41	12,049.74	377.53	1,208.10	4,727.45
Transmission System Maintenance	11,015.24	31.95	7,207.27	225.81	722.60	2,827.61
General Office and General Expense	22,931.82	112.36	13,995.29	720.06	1,403.43	6,700.68
Taxes—Other than Income Tax	9,849.13	23.27	5,934.76	351.06	669.92	2,870.12
Other Expenses	41.89	.12	27.41	.86	2.75	10.75
Total Operating Expense	$231,193.16	$79.30	$140,265.52	$5,689.32	$16,892.66	$67,549.36
Net Return Before Providing for Depreciation and Income Tax	$268,108.93	$1,640.90	$164,476.73	$9,973.82	$13,647.03	$78,370.45

[fol. 1790]

South Texas Gas Company

Statement of Earnings

For the Year Ended July 31, 1932

				Texas Border Gas Company			
					Laredo		
	Total	Misc. Sales	Monterrey Line	Other Towns	Total	Outside City	Inside City
Operating Revenues:							
Gas Sales	$309,211.57	$5,385.25	$177,455.14	$10,692.72	$115,678.46	$20,448.51	$95,229.95
Rent Revenues	122.74	1.94	75.24	3.85	41.71	7.38	34.33
Total Operating Revenues	$309,334.31	$5,387.19	$177,530.38	$10,696.57	$115,720.17	$20,455.89	$95,264.28
Operating Expenses:							
Gas Purchases	$115,496.85	$1,862.40	$81,892.10	$2,261.95	$29,480.40	$6,776.75	$22,703.65
Transmission and Gathering System Expense	16,504.16	259.12	11,843.38	288.82	4,112.84	945.69	3,167.15
Transmission and Gathering System Maintenance	9,159.69	143.81	6,572.99	160.30	2,282.59	524.85	1,757.74
General Office and General Expense	18,545.47	293.02	11,368.37	582.33	6,301.75	1,114.58	5,187.17
Taxes	8,582.27	166.14	5,176.35	319.80	2,919.98	613.05	2,306.93
Total Operating Expenses	$168,288.44	$2,724.49	$116,853.19	$3,613.20	$45,097.56	$9,974.92	$35,122.64
Net Return Before Providing for Depreciation	$141,045.87	$2,662.70	$60,677.19	$7,083.37	$70,622.61	$10,480.97	$60,141.64

[fol. 1791]

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1929

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo		
				Total	Outside City	Inside City
Operating Revenue:						
Gas Sales	$364,500.18	.....	$30,898.11	$333,602.07	$52,281.39	$281,320.97
Forfeited Discounts	10,234.88	.....	867.92	9,366.96	1,467.68	7,899.28
Other Operating Revenues	1,924.55	.....	163.20	1,761.35	275.98	1,485.37
Merchandise & Jobbing Revenues	26,441.83	$26,441.83	.....	.....	.....	.....
Total Operating Revenues	$403,101.44	$26,441.83	$31,929.23	$344,730.38	$54,024.76	$290,705.62
Operating Expenses:						
Gas Purchases	$211,067.98	.....	$13,387.58	$197,680.40	$28,149.32	$169,531.08
Distribution System Operations	20,587.60	.....	2,433.45	18,154.15	638.22	17,515.93
Distribution System Maintenance	4,435.58	.....	524.29	3,911.29	137.50	3,773.79
New Business Expense	1,780.03	116.77	140.98	1,522.28	238.52	1,283.76
General Expense	26,619.88	1,746.26	2,108.29	22,765.33	3,567.07	19,198.26
Taxes—Other than Income Tax	9,124.68	.....	514.36	8,610.32	446.93	8,163.39
Merchandise & Jobbing Costs and Expense	22,862.51	22,862.51	.....	.....	.....	.....
Total Operating Expenses	$296,478.26	$24,725.54	$19,108.95	$252,643.77	$33,177.56	$219,466.21
Net Return Before Providing for Depreciation and Income Tax	$106,623.18	$1,716.29	$12,820.28	$92,086.61	$20,847.20	$71,239.41

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[fol. 1792]

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1930

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo		
				Total	Outside City	Inside City
Operating Revenues:						
Gas Sales	$415,512.32	.....	$38,430.60	$377,081.72	$57,608.49	$319,473.23
Forfeited Discounts	10,991.11	.....	1,016.68	9,974.43	1,523.37	8,451.06
Other Operating Revenues	2,170.00	.....	200.73	1,969.27	300.76	1,668.51
Merchandise and Jobbing Revenues	28,220.19	28,220.19	.....	.....	.....	.....
Total Operating Revenues	$456,893.62	$28,220.19	$39,648.01	$389,025.42	$59,432.62	$329,592.80
Operating Expenses:						
Gas Purchases	$240,631.66	.....	$16,624.54	$224,007.12	$31,294.95	$192,712.17
Distribution System Operations	23,020.08	.....	3,024.84	19,995.24	676.79	19,318.45
Distribution System Maintenance	6,618.77	.....	869.71	5,749.06	194.59	5,554.47
New Business Expense	4,173.11	257.48	362.23	3,553.40	542.92	3,010.48
General Expense	34,951.03	2,156.48	3,033.75	29,760.80	4,547.13	25,213.67
Taxes—Other than Income Tax	11,556.07	.....	656.72	10,899.35	583.95	10,315.40
Merchandise & Jobbing Costs and Expense	24,617.16	24,617.16	.....	.....	.....	.....
Total Operating Expenses	$345,567.88	$27,031.12	$24,571.79	$293,964.97	$37,840.33	$256,124.64
Net Return Before Providing for Depreciation and Income Tax	$111,325.74	$1,189.07	$15,076.22	$95,060.45	$21,592.29	$73,468.16

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[fol. 1793]

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1931

	Total	Mdse. & Jobbing	Gas Operations		
			Other Towns	Laredo	
				Outside City	Inside City
Operating Revenues:					
Gas Sales	$340,739.14	.....	$32,313.10	$54,273.91	$254,152.13
Forfeited Discounts	9,621.68	.....	912.14	1,532.73	7,176.81
Other Operating Revenues	2,230.00	.....	211.40	355.24	1,663.36
Merchandise and Jobbing Sales	37,271.88	37,271.88	.....	.....	.....
Total Operating Revenues	$389,862.70	$37,271.88	$33,436.64	$56,161.88	$262,992.30
Operating Expenses:					
Gas Purchases	$192,122.64	.....	$15,663.14	$30,539.69	$145,919.81
Distribution System Operations	16,664.48	.....	2,388.02	574.93	13,701.53
Distribution System Maintenance	10,082.84	.....	1,444.87	347.86	8,290.11
Customers' Expense	10,482.21	.....	1,502.10	361.64	8,618.47
New Business Expense	5,981.73	571.85	513.23	861.37	4,035.28
General Office and General Expense	13,914.60	1,330.24	1,193.87	2,003.70	9,386.79
General Expense—Divisional	13,386.43	1,279.74	1,148.56	1,927.65	9,030.48
Taxes—Other than Income Tax	14,390.78	.....	932.33	778.04	12,680.41
Merchandise and Jobbing Costs and Expense	34,360.50	34,360.50	.....	.....	.....
Other Operating Expenses	428.37	.....	61.39	14.77	352.21
Total Operating Expenses	$311,814.58	$37,542.33	$24,847.51	$37,409.65	$212,015.09
Net Return Before Providing for Depreciation and Income Tax	$78,048.12	$270.45*	$8,589.13	$18,752.23	$50,977.21

* Red in copy.

[fol. 1794]

Texas Border Gas Company

Statement of Earnings

For the Year Ended July 31, 1932

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo City Gate	Less: Outside City Limits	Operations Inside City Limits
Operating Revenues:						
Gas Sales	$256,137.03	.....	$25,155.73	$230,981.30	$38,632.17	$192,349.13
Reconnect Charges	2,183.40	.....	301.53	1,881.87	73.14	1,808.73
Rent Revenues	175.50	.....	.....	175.50	.....	175.50
Miscellaneous Operating Revenues	109.12	.....	15.07	94.05	3.65	90.40
Merchandise and Jobbing Sales	10,780.60	10,780.60	.....	.....	.....	.....
Total Operating Revenues	$269,385.65	$10,780.60	$25,472.33	$233,132.72	$38,708.96	$194,423.76
Operating Expenses:						
Gas Purchases	$126,218.63	.....	$10,692.72	$115,525.91	$20,448.51	$95,077.40
Distribution System Operations	13,956.38	.....	1,927.38	12,029.00	467.54	11,561.46
Distribution System Maintenance	15,097.36	.....	2,084.94	13,012.42	505.76	12,506.66
Customers' Expense	18,550.55	.....	2,561.88	15,988.72	621.44	15,367.28
New Business Expense	6,395.08	255.80	604.98	5,534.30	918.97	4,615.33
General Office and General Expense	20,122.54	804.90	1,903.59	17,414.05	2,891.61	14,522.44
General Expense—Divisional Operations	14,098.64	563.95	1,333.73	12,200.96	2,025.97	10,174.99
Taxes	12,272.06	.....	1,133.15	11,138.91	707.54	10,431.37
Merchandise & Jobbing Expenses	15,670.82	$15,670.82	.....	.....	.....	.....
Total Operating Expenses	$242,382.06	$17,295.47	$22,242.32	$202,844.27	$28,587.34	$174,256.93
Net Return Before Providing for Depreciation	$27,003.59	$6,514.87*	$3,230.01	$30,288.45	$10,121.62	$20,166.83

* Red in copy.

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[fol. 1795] South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management Fees	$7,656.27	$11,811.82	$2,220.91	$1,815.56
Loss on Bad Debts	723.30	2,138.14	1,294.80	2,874.47
Advertising	1,283.76	2,591.58	1,495.04	2,054.63
General Office Expense Prorated from United Gas Company	.....	.....	9,399.93	12,389.37
Special Payrolls Prorated from United Gas Company	.....	.....	5,069.25	3,154.26
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,838.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,342.32
General Expense Prorated from United Production Company	.....	.....	.....	153.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

[fol. 1796]

South Texas Gas Company

Questionable Items Contained in Operating Statements

Years Ending June 30, 1929, 1930, 1931, and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929:				
Management Fees	General Expense	$3,178.93	80.32%	$2,553.32
Year Ended June 30, 1930:				
Management Fees	General Expense	$7,495.84	58.51	$4,385.82
Year Ended June 30, 1931:				
Management Fees	General Expense	$2,935.80	29.22	$857.84
General Office Expense Prorated	" "	7,051.78	29.22	2,060.53
Special Payrolls—United	" "	5,541.80	29.22	1,619.31
General Expense—Southern Gas Co.	" "	1,985.22	29.22	580.08
Total		$17,514.60		$5,117.76
Year Ended July 31, 1932:				
Management Fees	General Expense	$1,882.79	27.97	$526.62
General Office Expense Prorated	" "	10,023.60	27.97	2,803.60
Maintenance General Structures	" "	387.66	27.97	108.43
General Expense—Southern Gas Co.	" "	3,308.47	27.97	925.38
General Expense—United Prod. Co.	" "	550.38	27.97	153.94
Total		$16,152.90		$4,517.97

[fol. 1797]

Texas Border Gas Company

Questionable Items Contained in Operating Statements

Years Ended June 30, 1929, 1930, 1931, and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929:				
Management Fees	General Expense	$7,075.64	72.12%	$5,102.95
Loss on Bad Debts	" "	1,002.91	72.12	723.30
Advertising	New Bus. "	1,780.03	72.12	1,283.76
Total		$9,858.58		$7,110.01
Year Ended June 30, 1930:				
Management Fees	General Expense	$10,293.87	72.14	$7,426.90
Loss on Bad Debts	" "	2,963.87	72.14	2,138.14
Advertising	New Bus. "	3,592.43	72.14	2,591.58
Total		$16,850.17		$12,155.72
Year Ended June 30, 1931:				
Management Fees	General Expense	$2,020.56	67.46	$1,363.07
Loss on Bad Debts	Customers' "	1,574.80	82.22	1,294.80
Advertising	New Bus. "	2,216.18	67.46	1,495.04
General Office Expense Prorated	General "	10,879.63	67.46	7,339.40
Special Payrolls—United Gas Co	" "	5,114.06	67.46	3,449.94
General Expense Prorated—Southern Gas Company	" "	205.57	67.46	138.68
Total		$22,010.80		$15,080.93

Year Ended July 31, 1932:				
Management Fees	General Expense	$1,785.98	72.17	$1,288.94
Loss on Bad Debts	Customers' "	3,348.19	82.84	2,773.64
Loss on Bad Debts	General "	139.72	72.17	100.83
Advertising	New Bus. "	2,846.93	72.17	2,054.63
General Office Expense Prorated	General Expense	13,282.22	72.17	9,585.77
Maintenance General Structures	" "	451.67	72.17	325.99
General Expense Prorated—Southern Gas Company	" "	1,264.56	72.17	912.63
Special Payrolls—United Gas Co	" "	4,370.59	72.17	3,154.26
Donations	Dist. System Operations	343.16	72.17	247.66
Donations	Dist. System Operations	241.50	82.84	200.06
Testing Mains for Leaks	General Expense	1,016.84	82.84	842.35
Laredo Rate Case Expense		1,859.94	72.17	1,342.32
Total		$30,951.30		$22,829.08

[fols. 1798-1799] Plaintiffs' Exhibit No. 9, of which the following is a true and correct transcript, was offered in evidence while the Witness Henry E. Elrod was testifying and was introduced by plaintiffs and identified as shown on page 1104, volume II, of this Statement of Facts and Transcript.

[fol. 1800] PLAINTIFFS' EXHIBIT No. 9

Allocation

Transmission System Allocated to City of Laredo on basis of Proportional Volumes of Gas Delivered:—

Total Volume of Gas, M. C. F.		465,081
Total Volume of Gas Delivered to City Gate, M. C. F.		317,071
Per cent. to Laredo	68.18	

Distribution System allocated to City of Laredo on basis of proportional volumes of gas to inside and outside of City through Intermediate Pressure System.

Total Volume of Gas, M. C. F.		436,219
Volume Inside of City, M. C. F.		309,075
Volume Outside of City, M. C. F.		127,144
Per cent. to Laredo	70.85	
Appraised value Distribution System		$597,736
Less " Intermediate Pressure System		91,397
Balance		$506,339
Plus Intermediate Pressure System Allocated		64,755
Total Value of Distribution System		$571,094

	Total Appraised Value, New	Allocated to Laredo
Transmission Properties	$359,128x68.18%	$244,853
Distribution Properties	597,736	571,094
Totals	$956,864	$815,947
Weighted Average Per Cent. for Allocation	85.27.	

[fol. 1801] General Summary and Allocation

	Cost New	% Condition	Cost, New Less Depr.
Transmission System	$359,128		$263,063
Distribution System	597,736		470,488
Totals	$956,864		$733,551
Less:—			
Land, Leases & Rights-of-way	10,475		10,475
Balances	$946,389		$723,076
Materials & Supplies	19,744		19,744
Balances	$926,645	75.90	$703,332
Included with and incorporated in this amount, as "Expense of Purchase & Storage," and deducted as being excessive	$28,711	75.90	$21.792
Balances	$897,934		$681,540

General Summary and Allocation—Continued

	Cost New	% Condition	Cost, New Less Depr.
Add back for Land, Leases & R. O. W.	10,475		10,475
Add for Reasonable Purchase & Storage	7,500		5,693
Totals	$915,909		$697,708
Less Items Already Allocated:			
Furniture & Fixtures	10,310		7,320
Auto & Equipment	5,807		1,724
Tools & Equipment	2,321		1,741
	$18,438		$10,785
Balance for Allocation	$897,471		$636,923
Allocated to Laredo, 85.27%	$765,274		$585,739
Add Items Already Allocates	18,438		10,785
Totals Allocated to Laredo	$783,712		$596,524
Preliminary & Organization, 2%	15,674		15,674
Engineering & Supervision, 2½%	19,593		14,870
Administration & Legal, 1½%	11,756		8,923
Taxes During Construction, ½%	3,919		3,919
Interest During Construction, 3½%	27,430		20,819
[fol. 1802]			
Materials & Supplies	19,744		19,744
Working Cash, 45 days of Annual Operation Expense less Gas Purchases	9,788		9,788
Totals	$891,616		$690,261

$690,261

[fols. 1803–1805]

Summary:	Cost of Reproduction New	Less Depr.
Transmission System of South Texas Gas Company	$359,128	$263,063
Distribution System of Texas Border Gas Company	597,736	470,488
Total	$956,864	$733,551

[fols. 1806–1864]

Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4,350	4,350
Acct. 318 Rights-of-Way	5,724	5,724
Acct. 320 Transmission Regulating & Measuring Station Structures	1,712	1,431
Acct. 321 Other Transmission System Structures	6,263	4,746
Acct. 323 Transmission System Regulating and Measuring Station Equipment	6,912	5,738
Acct. 324 Transmission Line Equipment	317,852	227,695
Acct. 325 Other Transmission System Equipment:		
A—Farm Taps	105	87
B—Telephone System	11,828	10,054
C—Miscellaneous	246	196
D—Furniture & Fixtures	666	268
E—Automotive Equipment	964	290
F—Tools & Equipment	149	127
Total, Except Material & Supplies	356,771	260,706
Material & Supplies	2,357	2,357
Total—Transmission System	359,128	263,063

[fols. 1865–1972] Summary

Distribution—Laredo

Property Inside City Limits

	Cost New	Less Depr.
Acct. 326 Land	401	401
Acct. 329 District Regulator & Measuring Station Structures	676	515
Acct. 330 Other Distribution System Structures	1,145	853
Acct. 332 Measuring & Regulating Equipment	1,830	1,481
Acct. 333 Distribution Line Equipment—Intermediate Low Pressure	396,010	313,385
Acct. 334 Services:		
A—All except Industrial	80,986	62,359
B—Industrial	8,672	6,677
Acct. 335 & 336 Meters & Meter Installations (Inside City Limits)	62,201	47,895
Acct. 337 Service Regulators	607	468
Acct. 338 Other Distribution System Equipment:		
A—Industrial Installations	9,383	8,282
B—Furniture & Fixtures	10,310	7,320
C—Automotive Equipment	5,807	1,724
E—Tools & Equipment	2,321	1,741
Total, Except Material & Supplies	580,349	453,101
Acct. 338 Other Distribution System Equipment:		
D—Material & Supplies	17,387	17,387
Total—Distribution System—Laredo	597,736	470,488

[fol. 1973] Plaintiffs' Exhibit No. 10, of which the following is a true and correct transcript, was offered in evidence while the Witness W. W. Stein was testifying and was introduced by plaintiffs and identified as shown on page 1533, volume II, of this Statement of Facts and Transcript.

[fol. 1974] PLAINTIFFS' EXHIBIT No. 10

This Agreement made and entered into this 10th day of April, 1928, by and between South Texas Production Company, a Texas corporation, (hereinafter called "Seller") and South Texas Gas Company, a Delaware corporation, (hereinafter called "Purchaser"),

Witnesseth:

Whereas, the Seller owns or controls, through lease or contract, the gas rights in and to certain lands in Webb, Duval, Zapata, Jim Hogg and Starr Counties of the State of Texas and is desirous of securing a market for gas obtained therefrom, and

Whereas, Purchaser is engaged in the purchase, transportation and sale of natural gas, and owns or controls pipe lines and gas transportation systems, and is desirous of purchasing gas for transportation through its pipe lines for sale to its customers;

Now, Therefore, in consideration of the premises and of the covenants and agreements hereinafter set forth to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

1. Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase and receive from Seller at the wells of Seller, such quantities of natural gas as Purchaser [fol. 1975] may require for sale to its customers.

2. All gas purchased hereunder shall be measured by and through standard orifice meter or meters to be installed and maintained by and at the expense of Purchaser at the point or points of delivery. The gas shall be measured at such pressure as may exist by virtue of operating conditions, but for the purpose of computing the payments to be made therefor by Purchaser to Seller, the measurements shall be corrected to a pressure of two (2) pounds above an atmospheric pressure of 14.7 pounds per square inch, to a temperature of 60° Fahrenheit, and to a specific gravity of six-tenths (6/10th).

3. Purchaser shall pay the Seller for all gas delivered hereunder at the rate of Eight Cents (8¢) per thousand cubic feet, except that as to gas sold by Seller to domestic consumers or to distributing companies which deliver the same to domestic consumers, Purchaser shall pay Seller therefor at the rate of Thirteen Cents (13¢) per thousand cubic feet.

By the term "domestic consumers" as used in this Agreement, is meant all those consumers using, or who may use natural gas in domestic service, and is defined as including the use of natural gas for heating, lighting and cooking in private homes, boarding houses, apartment houses, hospitals and charitable institutions, and shall also extend to those using natural gas for lighting, cooking or water heating [fol. 1976] only, in hotels, restaurants and stores and for heating in hotels and buildings where separate rooms are dependent upon natural gas for heating purposes in grates and stoves. All other uses are considered as "industrial uses".

4. Payment for gas delivered hereunder shall be made by Purchaser to Seller at Laredo, Texas, on or before the Twentieth (20th) day of each month for all gas delivered

during the preceding calendar month. Purchaser agrees to furnish to Seller, on or before the tenth (10th) day of each month, meter charts showing amounts of gas delivered by Seller to Purchaser during the preceding calendar month, and statements showing the amounts of gas which Purchaser billed to its consumers as domestic gas during such preceding month. Seller agrees to render bills to Purchaser for gas so sold by Purchaser, and for all other gas delivered to Purchaser hereunder during such preceding month, within five (5) days after the receipt by Seller of the above mentioned meter charts and statements.

5. Seller shall not be liable to Purchaser for any failure to deliver gas when such failure is occasioned by accident to, or breakage of pipe lines or machinery, or the failure, depletion or destruction of gas wells or fields, or fires, strikes, riots, explosions, acts of God or the public enemy, and/or without limitation by the preceding enumeration, any other [fol. 1977] cause reasonably beyond the control of Seller.

6. Purchaser shall not be liable for its failure to purchase and receive gas from the Seller when such failure is occasioned by fires, floods, strikes, riots, explosions, breakage and repairs to the pipe lines and machinery, acts of God or the public enemy, and/or without limitation by the preceding enumeration, any other cause reasonably beyond the control of Purchaser.

6. This Agreement shall continue and remain in force for a period of ten years from the date hereof, and thereafter until terminated by either party hereto upon six (6) months' written notice to the other party.

7. This Agreement shall be subject to all valid orders, rules and regulations of the Railroad Commission of the State of Texas governing the production of natural gas and the transportation thereof within said state.

8. This Agreement shall inure to the benefit of, and be binding upon the respective successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their proper officers, and their

respective corporate seals to be hereunto affixed, on the day and year first above written.

South Texas Production Company, (Signed) by E. G. Diefenbach, Vice-President, Seller.

Attest: (Signed) Warren J. Dole, Secretary.

South Texas Gas Company, (Signed) by Alfred Borchert, Vice-President, Purchaser.

Attest: (Signed) Warren J. Dole, Secretary.

[fol. 1978] Plaintiffs' Exhibit No. 11, of which the following is a true and correct transcript, was offered in evidence while the Witness W. W. Stein was testifying and was introduced by plaintiffs and identified as shown on page 1533, volume II, of this Statement of Facts and Transcript.

[fol. 1979] PLAINTIFF'S EXHIBIT No. 11

This Agreement made and entered into, this 30th day of November, 1929, by and between South Texas Production Company, a Texas Corporation, hereinafter called "Seller", and South Texas Gas Company, a Delaware corporation, authorized to do business in Texas, hereinafter called "Purchaser",

Witnesseth:

Whereas, heretofore, to-wit, on the 10th day of April, 1928, the parties hereto entered into an agreement whereby Seller agreed to sell and deliver to Purchaser, and Purchaser agreed to purchase and receive from Seller, at the wells of Seller on lease and lands owned and controlled by Seller in Webb, Duval, Zapata, Jim Hogg and Starr Counties, of the State of Texas, such quantities of natural gas as Purchaser might require for sale to its customers during the term thereof; and

Whereas, the parties hereto desire to modify the terms of said agreement in the manner hereinafter set forth.

Now, Therefore, in consideration of the premises and of the sum of One Dollar to each of the parties paid by the other, receipt of which is hereby aeknowledged, it is agreed by [fol. 1980] and between said parties as follows:

Beginning December 1, 1929, Purchaser shall pay to Seller for all gas delivered under said agreement of April

10, 1928, at the rate of five cents (5¢) per thousand cubic feet on the basis of measurement set out in Paragraph 2 of said agreement.

Except as herein modified, said agreement of April 10, 1928, shall continue and remain in full force and effect in all of its terms and conditions.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their proper officers hereunto duly authorized and their respective corporate seals to be hereunto affixed, on the day and year first above written.

South Texas Production Company, (Sgd.) by W. W. Stein, Vice-President, Seller.

Attest: (Sgd.) N. N. Oille, Asst. Secretary. (Seal.)

South Texas Gas Company, (Sgd.) by O. R. Seagraves, President, Purchaser.

Attest: (Sgd.) Leo Wright. (Seal.)

[fols. 1981-1986] June 30, 1931.

We hereby certify that the foregoing two pages are a true and correct copy of the original Agreement dated November 30, 1929, between South Texas Production Company and South Texas Gas Company.

Chatham Phenix National Bank and Trust Company, Trustee, by —— ——, Trust Officer.

[fol. 1987] Plaintiffs' Exhibit No. 13, of which the following is a true and correct transcript, was offered in evidence and was introduced by plaintiffs and identified as shown on page 1614, volume II, of this Statement of Facts and Transcript.

[fol. 1988] PLAINTIFFS' EXHIBIT No. 13

STATE OF TEXAS,
County of Webb:

Know All Men by These Presents:

That Border Gas Company, a corporation organized under the laws of the State of Louisiana, with a permit to do business in the State of Texas, acting by and thorough its duly authorized officers, for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations in hand paid by South Texas Gas Company,

a corporation organized under the laws of the State of Delaware with a permit to do business in the State of Texas, receipt of which is hereby acknowledged, does hereby Grant, Bargain, Sell, Transfer, Assign and Convey unto South Texas Gas Company, a corporation, its successors and assigns, all and singular the following described property:

First. All that certain pipe line for the transportation and supply of gas extending from a point near Laredo, Webb County, Texas, in an easterly direction for 29.50 miles to a junction point near Aguilares, Webb County, Texas, and from said junction point extending in a northeasterly direction for 12.33 miles to the Carolina-Texas Gas Field in Webb County, Texas, with gathering lines in said field, and from said junction point extending in a [fol. 1989] southeasterly direction 5.7 miles to a point near Schott Junction, Webb County, Texas, with a branch pipe line extending from said point near Schott Junction in a northerly direction to Mirando City, Webb County, Texas, and from there in a northeasterly direction to Oilton, Webb County, Texas, and also a branch line extending from said point near Schott Junction in a southerly direction 5.21 miles; also that certain pipe line for the transportation and supply of gas extending from a junction point with the aforesaid pipe line near Pescadito, Webb County, Texas, in a southeasterly direction 27.37 miles to Cuellar Lease on G. C. and S. F. Railway Survey No. 208, Zapata County, Texas, with gathering lines to Wells on said lease and on J. D. Jenning's leases; also that certain pipe line for the transportation and supply of gas extending from wells of the Houston Oil Company near Bruni, Webb County, Texas, 1.07 miles in a southeasterly direction to the said town of Bruni; also that certain pipe line for the transportation and supply of gas extending from Cole #4 Well of Cole Petroleum Company on the Mariano Arispe Grant in Duval County, Texas, in a southeasterly direction 12.93 miles to the Town of Hebbronville in Jim Hogg County, Texas, also all other branch pipe lines, gathering lines and connecting lines appurtenant to the foregoing pipe lines.

Second. All rights of way and easements owned by the [fol. 1990] Border Gas Company for the laying, construction, maintenance and operation of said pipe lines and all rights, titles, privileges and estates under and by virtue

of said rights of way grants, including specifically but not limited to the following described and referred to grants and rights of way and easements owned by Border Gas Company, and the rights of way and easements covered thereby, with all rights, titles, privileges and estates owned or held thereunder:

[fols. 1991-1994] Here follows a detailed list of oil and gas leases comprising the Companies's production system properties.

[fol. 1995] To Have and to Hold the above described pipe lines, rights, easements, titles and estates, together with all privileges and appurtenances thereunto in any wise belonging, unto the said South Texas Gas Company, its successors and assigns, forever, and the said Border Gas Company hereby covenants with the said South Texas Gas Company, its successors and assigns, that the Border Gas Company has good and marketable title to all of the above described properties and that said properties are free and clear from all liens and emcumbrances. That the above described pipe lines and gathering lines are in good working condition and free from defects, that said Border Gas Company has valid and sufficient rights of way and easements for the operation and mantenance of said pipe lines, gathering lines and appurtenances thereto, whether specifi-
[fols. 1996-1999] cally covered by the rights of way grants described above or not, and that it will indemnify, hold safe and harmless the said South Texas Gas Company, its successors and assigns, from any loss by reason of any defects in said rights of way and easements, and the said Border Gas Company will warrant and forever defend, all and singular, the above described properties unto the South Texas Gas Company, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

In Witness Whereof the Border Gas Company has caused this instrument to be executed by its duly authorized officers and its corporate seal hereto affixed, this the 9th day of April, 1928.

Border Gas Company, by J. A. Elkins, Vice-President.

Attest: E. D. Adams, Assistant Secretary. (Seal.)
(Acknowledged in statutory form.)

[fols. 2000-2007] [File endorsements omitted]

* * * * * * * *

[fol. 2008] DEFENDANT'S EXHIBIT No. 2

United Gas System

General Office Expenses

Nature of Expenses and Bases for Apportionment

[fol. 2009] Index

Account No.	Description	Sheet No.
	Classification of Accounts:	
	General to All Companies	1-2
	Carried by Each Company	3
154	General Office and General Expenses—All Companies:	
	Apportionment to Companies	4
	Apportionment to Operating Departments	5
154-50	General Office New Business Expenses—All Companies:	
154-50-24	Commercial	6
154-50-34	Publicity	7
154-50-40	Industrial Engineering	8
154-52	General Office General Expenses—All Companies:	
154-52-18	Administrative—General	9
154-52-19	Administrative—Production	10-11
154-52-20	Administrative—Pipe Line	12
154-52-21	Administrative—Distribution	13
154-52-22	Accounting and Treasury	14
154-52-23	Chemical	15
154-52-25	Construction Accounting	16-17
154-52-26	Dispatching	18
154-52-27	Engineering and Valuation	19-20
154-52-28	Geological	21
154-52-29	Insurance and Safety	22-23
154-52-30	Land and Lease	24
154-52-31	Mapping	25-26
154-52-32	Measurement	27
154-52-35	Right of Way and Claims	28

Defendant's Exhibit No. 2—Continued

Account No.	Description	Sheet No.
154-52-38	Telephone System	29
154-52-41	Rate	30-31
154-52-45	Property Tax	32-33
154-52-46	Office Manager and Secretary	34
154-52-49	Gasoline	35
154-52-50	Compressor Stations	36
154-54	General Office Other General Expenses—All Companies:	
154-54- 1	Law Expenses	37
154-54- 3	Other Insurance	38
154-54- 5	Valuation and Regulatory Commission Expenses	39-40
154-54-11	Medical Expenses	41
154-54-22	Aerial Transportation Expenses	42
154-55	Maintenance of General Telephone System	43
	United Gas Public Service Company:	
150-50	General Office New Business Expenses	44-46
150-52	General Office and General Expenses	47-49
150-54	General Office Other General Expenses	50-53

[fol. 2010]

Sheet 1

United Gas System

General Expenses

Accounts Carried by United Gas Public Service Company

154 General Office and General Expenses—General to All Companies

154-50 General Office New Business Expenses

Departments

24 Commercial

34 Publicity

40 Industrial Engineering

Each of the above has further classification as follows:

1 Rentals

2 Advertising Salaries

3 Advertising Supplies and Expenses

Defendant's Exhibit No. 2—Sheet 1—Continued

4 Sales Management Salaries and Expenses
5 Salesmen's Salaries and Expenses
6 Demonstrations
7 Miscellaneous New Business Supplies and Expenses

154-52 General Office—General Expenses
Departments
18 Administrative—General
19 Administrative—Production
20 Administrative—Pipe Line
21 Administrative—Distribution
22 Accounting and Treasury
23 Chemical
25 Construction Accounting—60% to ERs
26 Dispatching
27 Engineering and Valuation—60% to ERs
28 Geological
29 Insurance and Safety
30 Land and Lease—75% to ERs
31 Mapping—75% to ERs
32 Measurement
35 Right of Way and Claims
38 Telephone System
41 Rate
45 Property Tax
46 Office Manager and Secretary
49 Gasoline
50 Compressor Stations
Expenses Transferred to Expense Equalization
33 Purchase and Traffic
36 General Stores Accounting
37 Capitol Avenue Garage
44 Reproduction
Each of the above has further classification as follows:
1 Administrative and Other Office Salaries
3 Office Supplies and Expenses
4 Stationery and Printing
5 Telephone and Telegraph

Defendant's Exhibit No. 2—Sheet 1—Continued

6 Traveling Expense
9 Rentals
10 Other General Expense

Revised April 1, 1933

[fol. 2011] Sheet 2

United Gas System

General Expenses

Accounts Carried by United Gas Public Service Company

154 General Office and General Expenses—General to All Companies
154-54 Other General Expenses
1 Law Expense
3 Other Insurance
5 Valuation and Regulatory Commission Expense
1 Valuation
2 Accounting
3 Load Factor
4 Legal
5 Other
11 Medical Expense
22 Aerial Transportation Expenses
154-55 Maintenance of General Telephone System
154-59 General Office and General Expense Distributed (Credit)
(Credit to this account offsets total debits in Account 154)

Revised April 1, 1933

[fol. 2012] Sheet 3

United Gas System

General Expenses

Accounts Carried by Each Company

150 General Office New Business and General Expenses
150-50 General Office New Business Expense
1 Rentals
2 Advertising Salaries

Defendant's Exhibit No 2—Sheet 3—Continued

3 Advertising Supplies and Expenses
4 Salesmanagement Salaries and Expenses
5 Salesmen's Salaries and Expenses
6 Demonstrations
7 Miscellaneous New Business Supplies and Expenses
9 Proportion of General Office New Business Expense—General (From proration of account 154-50)

150-52 General Office and General Expenses
1 Administrative and Other Office Salaries
3 Office Supplies and Expenses
4 Stationery and Printing
5 Telephone and Telegraph
6 Traveling Expenses
9 Rentals
10 Other General Expense
11 Proportion of General Office Expense—General (From proration of account 154-52)

150-54 Other General Expenses
1 Law Expenses
2 Fire Insurance
3 Other Insurance
4 Supervision and Consultation Fees
5 Valuation and Regulatory Commission Expense
1 Valuation
2 Accounting
3 Load Factor
4 Legal
5 Other
6 Franchise Requirements
7 Amortization of Franchise
8 Employes Welfare Department
9 Pensions
10 Claim Department Expenses
11 Medical Expenses
12 Injuries to Employes
13 Other Personal Injuries and Property Damage
14 Miscellaneous Accident Expenses
15 Undistributed Adjustments

Defendant's Exhibit No 2—Sheet 3—Continued

16 Proportion of Other General Expenses—General (From proration of account 154-54)
17 Audit Fees
18 Donations
19 Other Miscellaneous
20 Provision for Uncollectible General Accounts

150-55 Maintenance of General Structures

150-56 Taxes
1 Federal Income Tax
2 Other Taxes

150-59 General Office and General Expense Distributed (Credit)
(Credit to this account offsets total debits to account 150)

Revised April 1, 1933

Sheet 4

United Gas System

Apportionment to Companies

General Office and General Expenses General to All Companies

	Total	United Gas Public Service Company	United Production Corporation	Southern Gas & Fuel Company	Northern Texas Utilities Company	Houston Gulf Gas Company	Houston Gas and Fuel Company	Southern Gas Company	Southern Gas Utilities, Inc.	Compania Mexicana de Gas, S. A.
General Office New Business Expenses:										
Commercial	100.0%	71.2%	.....	.....	9.5%	4.8%	10.0%	.1%	4.4%	.....
Publicity	100.0%	63.5%	.....	.....	7.0%	3.8%	23.0%	.....	2.7%	.....
Industrial Engineering	100.0%	56.8%	.....	5.3%	5.9%	15.3%	.....	10.6%	2.7%	3.4%
General Office-General Expenses:										
Administrative—General	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Administrative—Production	100.0%	56.4%	25.7%	.....	1.7%	3.9%	.....	4.6%	7.7%	.....
Administrative—Pipe Line	100.0%	68.4%	.....	3.4%	7.6%	6.2%	.....	10.7%	1.5%	2.2%
Administrative—Distribution	100.0%	72.6%	.....	.....	8.5%	4.1%	10.0%	3.3%	4.5%	.....
Accounting & Treasury	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Chemical	100.0%	78.3%	19.3%	.....	.....	1.1%	.....	.7%	.6%	.....
Dispatching	100.0%	70.5%	.....	6.6%	.3%	9.5%	.....	11.4%	1.7%	.....
Engineering & Valuation	100.0%	73.7%	.2%	1.8%	8.5%	5.8%	.....	6.1%	2.8%	1.1%
Geological	100.0%	42.4%	44.8%	.....	.5%	5.0%	.....	1.5%	3.6%	2.2%
Insurance and Safety	100.0%	58.0%	7.8%	2.3%	2.4%	6.5%	17.2%	4.4%	1.3%	.1%
Land and Lease	100.0%	42.4%	44.8%	.....	.5%	5.0%	.....	1.5%	3.6%	2.2%
Mapping	100.0%	42.4%	44.8%	.....	.5%	5.0%	.....	1.5%	3.6%	2.2%
Measurement	100.0%	70.4%	3.0%	.....	5.3%	8.3%	2.9%	5.5%	3.5%	1.1%
Right of Way & Claims	100.0%	72.7%	.2%	2.0%	8.2%	5.6%	.....	9.0%	2.3%	.....
Telephone System	100.0%	69.2%	.....	3.1%	.....	7.7%	.....	16.1%	.....	3.9%
Rate	100.0%	63.0%	.....	2.0%	6.5%	4.8%	16.0%	3.8%	3.2%	.7%

Defendant's Exhibit No. 2—Sheet 4—Continued

	Total	United Gas Public Service Company	United Production Corporation	Southern Gas & Fuel Company	Northern Texas Utilities Company	Houston Gulf Gas Company	Houston Gas and Fuel Company	Southern Gas Company	Southern Gas Utilities, Inc.	Compania Mexicana de Gas, S. A.
Property Tax	100.0%	67.3%	4.9%	5.0%	3.8%	4.0%	10.0%	4.0%	1.0%	.....
Office Manager and Secretary	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Gasoline	100.0%	100.0%	.....	.....	.....	.....	.....	.....	.....	.....
Compressor Stations	100.0%	75.8%	.....	7.9%	.....	9.6%	.....	6.7%	.....	.....
Other General Expense:										
Law Expense	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Other Insurance	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Valuation & Regulatory Commission Expense	100.0%	60.2%	.....	.....	17.9%	8.9%	.2%	6.2%	6.6%	.....
Medical Expense	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Aerial Transportation Expense	100.0%	66.3%	7.8%	1.7%	4.9%	5.7%	5.1%	4.4%	3.4%	.7%
Maintenance of General Telephone System	100.0%	67.8%	.....	3.3%	.....	8.0%	.....	16.9%	.....	4.0%

Sheet 5

United Gas System

Apportionment to Departments

General Office and General Expense General to All Companies

	Total	Production	Transmission	Distribution	Crude Oil	Gasoline	Carbon Black
General Office New Business Expenses:							
Commercial	100.0%	.....	.....	100.0%	.....	.....	.....
Publicity	100.0%	.....	.....	100.0%	.....	.....	.....
Industrial Engineering	100.0%	.....	100.0%	.....	.....	.....	.....
General Office—General Expenses:							
Administrative—General	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Administrative—Production	100.0%	84.0%	.....	.....	16.0%	.....	.....
Administrative—Pipe Line	100.0%	.....	100.0%	.....	.....	.....	.....
Administrative—Distribution	100.0%	.....	.....	100.0%	.....	.....	.....
Accounting and Treasury	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Chemical	100.0%	100.0%	.....	.....	.....	.....	.....
Dispatching	100.0%	.....	100.0%	.....	.....	.....	.....
Engineering and Valuation	100.0%	10.0%	50.0%	40.0%	.....	.....	.....
Geological	100.0%	100.0%	.....	.....	.....	.....	.....
Insurance and Safety	100.0%	16.4%	41.1%	32.4%	5.2%	4.6%	.3%
Land and Lease	100.0%	100.0%	.....	.....	.....	.....	.....
Mapping	100.0%	100.0%	.....	.....	.....	.....	.....
Measurement	100.0%	41.3%	49.3%	9.4%	.....	.....	.....
Right of Way and Claims	100.0%	17.0%	83.0%	.....	.....	.....	.....
Telephone System	100.0%	.....	100.0%	.....	.....	.....	.....
Rate	100.0%	.....	30.0%	70.0%	.....	.....	.....
Property Tax	100.0%	10.8%	59.7%	22.6%	3.8%	2.6%	.5%
Office Manager and Secretary	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Gasoline	100.0%	.....	.....	.....	.....	100.0%	.....
Compressor Stations	100.0%	.....	100.0%	.....	.....	.....	.....
Other General Expenses:							
Law Expenses	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Other Insurance	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Valuation and Regulatory Commission Expense	100.0%	.....	75.0%	25.0%	.....	.....	.....
Medical Expenses	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Aerical Transportation Expenses	100.0%	25.8%	35.5%	32.8%	3.0%	2.9%	.....
Maintenance of General Telephone System	100.0%	.....	100.0%	.....	.....	.....	.....

[fol. 2015] Sheet 6

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-50	New Business Expenses
154-50-24	Commercial

This account shall include salaries and expenses of the general commercial manager, his assistants and department engaged in directing and supervising load building activities of distribution systems.

Detailed classification provided for this department is as follows:

154-50-24- 1	Rentals
154-50-24- 3	Advertising Supplies and Expenses
154-50-24- 4	Salesmanagement Salaries and Expenses
154-50-24- 5	Salesmen's Salaries and Expenses
154-50-24- 6	Demonstrations
154-50-24- 7	Miscellaneous New Business Supplies and Expenses

Basis for Apportionment to Companies:

Since the cost of this department is directly related to distribution customers, it is applicable only to companies operating distribution systems. Houston Gas and Fuel Company shall be charged monthly with ten (10%) per cent of such cost and the remaining ninety (90%) per cent shall be apportioned to the other companies operating distribution systems in the proportion that the annual average number of distribution system customers of each of such other companies bears to the total annual average number of customers of all distribution systems of such other companies as are supervised by the department.

Apportionment:

United Gas Public Service Company	71.2%
Northern Texas Utilities Company	9.5%
Houston Gulf Gas Company	4.8%
Houston Gas and Fuel Company	10.0%
Southern Gas Company	.1%
Southern Gas Utilities, Inc.	4.4%
Total	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-50 New Business Expenses
150-50- 9 Proportion of General Office New Business Expenses
150-50- 9- 3 Natural Gas—Distribution

[fol. 2016] Sheet 7

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-50 New Business Expenses
154-50-34 Publicity

This account shall include salaries and expenses of the general publicity manager, his assistants and department engaged in directing and supervising advertising and allied activities.

Detailed classification provided for this department is as follows:

154-50-34- 1 Rentals
154-50-34- 2 Advertising Salaries
154-50-34- 3 Advertising Supplies and Expenses
154-50-34- 7 Miscellaneous New Business Supplies and Expenses

Basis for Apportionment to Companies:

The costs of operating this department are incurred primarily in connection with natural gas sales advertising for the purpose of acquiring new customers, introducing new uses, retaining present customers and developing present uses for natural gas; these costs are applicable to the distribution department. Such activities are conducted principally in incorporated cities.

Fifty (50%) per cent of this department's expenses shall be apportioned on the basis of the proportion of the number of distribution systems in incorporated cities operated by each company to the total such distribution systems operated by all companies.

Fifty (50%) per cent shall be apportioned on the basis of the proportion of the annual average number of distribution customers served by each company to the total annual average number of distribution customers served by all companies.

Apportionment:

United Gas Public Service Company	63.5%
Northern Texas Utilities Company	7.0%
Houston Gulf Gas Company	3.8%
Houston Gas and Fuel Company	23.0%
Southern Gas Company	
Southern Gas Utilities, Inc.	2.7%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-50	New Business Expenses
150-50- 9	Proportion of General Office New Business Expenses
150-50- 9- 3	Natural Gas—Distribution

[fol. 2017] Sheet 8

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-50 New Business Expenses

154-50-40 Industrial Engineering

This account shall include salaries and expenses of the superintendent of industrial sales, his assistants and department engaged in directing and supervising load building activities of transmission systems.

Detailed classification provided for this department is as follows:

154-50-40- 1	Rentals
154-50-40- 3	Advertising Supplies and Expenses
154-50-40- 4	Salesmanagement Salaries and Expenses
154-50-40- 5	Salesmen's Salaries and Expenses
154-50-40- 6	Demonstrations
154-50-40- 7	Miscellaneous New Business Supplies and Expenses

Basis for Apportionment to Companies:

Since the cost of this department is incurred solely for the benefit of those companies operating gas pipe lines, and is directly related to revenues obtained from transmission sales of gas (exclusive of residential and commercial sales) as well as to the number of customers to which such sales are made, fifty (50%) per cent of the cost shall be apportioned to those companies in the proportion that the annual revenues derived from transmission gas sales (exclusive of residential and commercial revenues) of each company bears to the total annual revenues derived from transmission gas sales (exclusive of residential and commercial revenues) of all companies; and fifty (50%) per cent of the cost shall be apportioned to those companies in the proportion that the annual average number of customers

of each company to which such sales are made, bears to the total annual average number of customers of all companies to which such sales are made.

Apportionment:

United Gas Public Service Company	56.8%
Southern Gas and Fuel Company	5.3%
Northern Texas Utilities Company	5.9%
Houston Gulf Gas Company	15.3%
Southern Gas Company	10.6%
Southern Gas Utilities, Inc.	2.7%
Compania Mexicana de Gas, S. A.	3.4%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-50	New Business Expenses
150-50- 9	Proportion of General Office New Business Expenses
150-50- 9- 2	Natural Gas—Transmission

[fol. 2018] Sheet 9

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-18	Administrative—General.

This department is applicable to all activities.

Detailed classification provided for this department is as follows:

154-52-18- 1	Administrative and Other Office Salaries
154-52-18- 3	Office Supplies and Expenses
154-52-18- 4	Stationery and Printing
154-52-18- 5	Telephone and Telegraph
154-52-18- 6	Traveling Expenses
154-52-18- 9	Rentals
154-52-18-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are general in nature, is applicable to natural gas, crude oil and gasoline activities. This cost shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas			Crude Oil	Gasoline	Total
	Production	Transmission	Distribution			
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 2 Natural Gas—Transmission
150-52-11- 3 Natural Gas—Distribution
150-52-11- 5 Crude Oil
150-52-11- 6 Gasoline

[fol. 2019] Sheet 10

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-52 General Office—General Expenses

154-52-19 Administrative—Production

This account shall include a portion of the salaries and expenses of the vice-president in charge of production and pipe line, the salaries and expenses of the general production superintendent and the gas production superintendent, their assistants and departments engaged in the administration of gas and crude oil production activities.

Detailed classification provided for this department is as follows:

154-52-19- 1	Administrative and Other Office Salaries
154-52-19- 3	Office Supplies and Expenses
154-52-19- 4	Stationery and Printing
154-52-19- 5	Telephone and Telegraph
154-52-19- 6	Traveling Expenses
154-52-19- 9	Rentals
154-52-19-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are confined to the production of gas and crude oil, is applicable only to companies owning production properties. It having been developed by a study of the cost of time devoted to production, floor space occupied being in close relationship to such cost, that eighty four (84%) per cent of the department's operations is applicable to gas and sixteen (16%) per cent is applicable to crude oil, apportionment shall be made on this basis.

The eighty four (84%) per cent applicable to gas is related to the number of gas wells, and apportionment shall be made to each company owning gas production in the proportion that the total annual average number of

gas wells owned or controlled under purchase contracts of such company bears to the total annual average number of gas wells owned or controlled under purchase contracts of all such companies.

[fol. 2020] Sheet 11

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-19 Administrative-Production.

Basis for Apportionment to Companies (Cont'd.)

The sixteen (16%) per cent applicable to crude oil is related to the volume of production, and apportionment shall be made to each company owning crude oil production in the proportion that the total number of barrels of oil produced annually by such company bears to the total number of barrels of oil produced annually by all such companies.

Apportionment:

	Gas	Crude Oil	Total
United Gas Public Service Company	56.2%	.2%	56.4%
United Production Corporation	10.0%	15.7%	25.7%
Northern Texas Utilities Company	1.7%		1.7%
Houston Gulf Gas Company	3.8%	.1%	3.9%
Southern Gas Company	4.6%		4.6%
Southern Gas Utilities, Inc.	7.7%		7.7%
Total	84.0%	16.0%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 5 Crude Oil

[fol. 2021] Sheet 12

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-20	Administrative—Pipe Line

This account shall include a portion of the salaries and expenses of the vice-president in charge of the production and pipe line departments, the salaries and expenses of the general superintendent of pipe lines, and of their assistants and departments engaged in the administration of gas transmission activities.

Detailed classification provided for this department is as follows:

154-52-20- 1	Administrative and Other Office Salaries
154-52-20- 3	Office Supplies and Expenses
154-52-20- 4	Stationery and Printing
154-52-20- 5	Telephone and Telegraph
154-52-20- 6	Traveling Expenses
154-52-20- 9	Rentals
154-52-20-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are confined to supervision of the transmission of gas, is applicable only to companies owning gas pipe lines. This cost being related both to length and size of pipe lines shall be apportioned to each company operating gas transmission lines in the proportion that the combination of the lineal and the 3" equivalent miles of transmission lines operated by each such company bears to the combination of the total lineal and the total 3" equivalent miles of transmission lines operated by all such companies.

Apportionment:

United Gas Public Service Company	68.4%
Southern Gas and Fuel Company	3.4%
Northern Texas Utilities Company	7.6%
Houston Gulf Gas Company	6.2%
Southern Gas Company	10.7%
Southern Gas Utilities, Inc.	1.5%
Compania Mexicana de Gas, S. A.	2.2%
Total	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 2 Natural Gas—Transmission

[fol. 2022] Sheet 13

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses
154-52-21 Administrative—Distribution

This account shall include salaries and expenses of the vice-president in charge of distribution, his assistants and department engaged in the administration of natural gas distribution activities.

Detailed classification provided for this department is as follows:

154-52-21- 1 Administrative and Other Office Salaries
154-52-21- 3 Office Supplies and Expenses
154-52-21- 4 Stationery and Printing
154-52-21- 5 Telephone and Telegraph
154-52-21- 6 Traveling Expenses
154-52-21- 9 Rentals
152-52-21-10 Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, being that of natural gas distribution management, is applicable only to companies operating natural gas distribution systems. It has a direct relationship to the number of distribution systems and to the customers of such systems. Houston Gas and Fuel Company shall be charged monthly with ten (10%) per cent of the cost of operating this department and one half of the remaining ninety (90%) per cent shall be apportioned to the other companies operating natural gas distribution systems in the proportion that the number of distribution systems of each of them bears to the total number of distribution systems of all such other companies; and one-half of the remaining ninety (90%) per cent shall be apportioned to these other companies in the proportion that the annual average number of distribution system customers of each bears to the total annual average number of customers of all such other companies. The sum of these apportionments to each of the other companies will be the total charge to such company.

Apportionment:

United Gas Public Service Company	72.6%
Northern Texas Utilities Company	8.5%
Houston Gulf Gas Company	4.1%
Houston Gas and Fuel Company	10.0%
Southern Gas Company	.3%
Southern Gas Utilities, Inc.	4.5%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 3	Natural Gas—Distribution

[fol. 2023] Sheet 14

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-22	Accounting and Treasury This department is applicable to all activities.

Detailed classification provided for this department is as follows:

154-52-22- 1	Administrative and Other Office Salaries
154-52-22- 3	Office Supplies and Expenses
154-52-22- 4	Stationery and Printing
154-52-22- 5	Telephone and Telegraph
154-52-22- 6	Traveling Expenses
154-52-22- 9	Rentals
154-52-22-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are general in nature, is applicable to natural gas, crude oil and gasoline activites. This cost shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative pipe-line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas					
	Production	Transmission	Distribution	Crude Oil	Gasoline	Total
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	.....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company.	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	.....	....	5.1%	...	...	5.1%
Southern Gas Company.....	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc..	1.5%	.6%	1.3%	....	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total.....	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 2 Natural Gas—Transmission
150-52-11- 3 Natural Gas—Distribution
150-52-11- 5 Crude Oil
150-52-11- 6 Gasoline

[fol. 2024] Sheet 15

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses
154-52-23 Chemical

This account shall include salaries and expenses of the chief chemist, his assistants and department engaged in the supervision and test checking of field analysis of natural gas,

soil, etc., of production and pipe line properties.

Detailed classification provided for this department is as follows:

154-52-23- 1	Administrative and Other Office Salaries
154-52-23- 3	Office Supplies and Expenses
154-52-23- 4	Stationery and Printing
154-52-23- 5	Telephone and Telegraph
154-52-23- 6	Traveling Expenses
154-52-23- 9	Rentals
154-52-23-10	Other General Expenses

Basis for Apportionment to Companies:

As the cost of operating this department is closely related to district chemical costs, it shall be apportioned monthly to such production and/or pipe line companies in the proportion that the sum of the district charges of this nature in each such company bears to the total district charges of this character in all such companies. (The district charges applicable to transmission being negligible, apportionment shall be made only to natural gas production).

Apportionment:

United Gas Public Service Company	78.3%
United Production Corporation	19.3%
Houston Gulf Gas Company	1.1%
Southern Gas Company	.7%
Southern Gas Utilities, Inc.	.6%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 1	Natural Gas—Production

[fol. 2025] Sheet 16

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-25	Construction Accounting

This department is applicable to all activities.

Detailed classification provided for this department is as follows:

154-52-25- 1	Administrative and Other Office Salaries
154-52-25- 3	Office Supplies and Expenses
154-52-25- 4	Stationery and Printing
154-52-25- 5	Telephone and Telegraph
154-52-25- 6	Traveling Expenses
154-52-25- 9	Rentals
154-52-25-10	Other General Expenses

NOTE—Sixty (60%) per cent of the cost of this department is chargeable to property account and forty (40%) per cent of the cost is chargeable to operation.

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are general in nature, is applicable to natural gas, crude oil and gasoline activities. This cost shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

[fol. 2026] Sheet 17

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-25 Construction Accounting (Cont'd):

Apportionment:	Natural Gas					
	Production	Transmission	Distribution	Crude Oil	Gasoline	Total
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 2 Natural Gas—Transmission
150-52-11- 3 Natural Gas—Distribution
150-52-11- 5 Crude Oil
150-52-11- 6 Gasoline

[fol. 1027] Sheet 18

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses

154-52-26 Dispatching

This account shall include salaries and expenses of the Chief dispatcher, his assistants and department principally engaged in maintaining an adequate supply of gas in transmission lines.

Detailed classification provided for this department is as follows:

154-52-26- 1	Administrative and Other Office Salaries
154-52-26- 3	Office Supplies and Expenses
154-52-26- 4	Stationery and Printing
154-52-26- 5	Telephone and Telegraph
154-52-26- 6	Traveling Expenses
154-52-26- 9	Rentals
154-52-26-10	Other General Expenses

Basis for Apportionment to Companies:

Since the cost of operating this department, the activities of which are confined to transmitting gas through pipe lines, is related to the direct district dispatching expenses, apportionment shall be made to each company operating pipe lines in the proportion that the total district dispatching expenses of such company bears to the total district dispatching expenses of all companies operating pipe lines.

Apportionment:

United Gas Public Service Company	70.5%
Southern Gas and Fuel Company	6.6%
Northern Texas Utilities Company	.3%
Houston Gulf Gas Company	9.5%
Southern Gas Company	11.4%
Southern Gas Utilities, Inc.	1.7%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 2	Natural Gas—Transmission

[fol. 2028] Sheet 19

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-52 General Office—General Expenses

154-52-27 Engineering and Valuation

This account shall include salaries and expenses of the chief engineer, his assistants and department engaged principally in making periodic examinations necessary for the purpose of maintaining good operating conditions, studies and recommendations with regard to types of construction and equipment to be used, and inventories and appraisals of physical natural gas production, transmission and distribution properties.

Detailed classification provided for this department is as follows:

154-52-27- 1	Administrative and Other Office Salaries
154-52-27- 3	Office Supplies and Expenses
154-52-27- 4	Stationery and Printing
154-52-27- 5	Telephone and Telegraph
154-52-27- 6	Traveling Expenses
154-52-27- 9	Rentals
154-52-27-10	Other General Expenses

Note.—Sixty (60%) per cent of the cost of this department is chargeable to property account and forty (40%) per cent of the cost is chargeable to operation.

Basis for Apportionment to Companies:

Since the activities of this department are principally confined to gas properties, the cost chargeable to operation is applicable only to companies engaged in the production, transmission or distribution of gas. It being developed by a study of time devoted to and work performed for gas production, transmission and distribution that ten (10%) per cent of the cost chargeable to operation is applicable

to production, that fifty (50%) per cent of such cost is applicable to transmission, and that forty (40%) per cent of such cost is applicable to distribution, apportionment shall be made on this basis.

Following is the apportionment to companies (exclusive of the Houston Gas and Fuel Company which employs a complete staff of engineers) based on estimated values of pipe mileage for production and transmission, and per meter estimated values for distribution.

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-27 Engineering and Valuation (Cont'd)

Apportionment:

	Production	Transmission	Distribution	Total
United Gas Public Service Company	7.9%	34.3%	31.5%	73.7%
United Production Corporation	.2%	....	....	.2%
Southern Gas and Fuel Company	....	1.8%	....	1.8%
Northern Texas Utilities Company	.6%	3.5%	4.4%	8.5%
Houston Gulf Gas Company	.5%	3.3%	2.0%	5.8%
Southern Gas Company	.6%	5.4%	.1%	6.1%
Southern Gas Utilities, Inc	.2%	.6%	2.0%	2.8%
Compania Mexicana de Gas, S. A	....	1.1%	....	1.1%
Total	10.0%	50.0%	40.0%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses

150-52 General Office—General Expenses

150-52-11 Proportion of General Office Expenses—General

150-52-11- 1 Natural Gas—Production

150-52-11- 2 Natural Gas—Transmission

150-52-11- 3 Natural Gas—Distribution

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-52 General Office—General Expenses

154-52-28 Geological

This account shall include salaries and expenses of the geological superintendent, his assistants and department engaged in the investigation of and recommendation pertaining to the acquisition of new properties; the following of the development in territories in which the companies operate; and the furnishing of gas reserves estimates in these territories.

Detailed classification provided for this department is as follows:

154-52-28- 1	Administrative and Other Office Salaries
154-52-28- 3	Office Supplies and Expenses
154-52-28- 4	Stationery and Printing
154-52-28- 5	Telephone and Telegraph
154-52-28- 6	Traveling Expenses
154-52-28- 9	Rentals
154-52-28-10	Other General Expenses

NOTE.—Eighty (80%) per cent of the cost of this department is chargeable to property account and twenty (20%) per cent of the cost is chargeable to operation.

Basis for Apportionment to Companies:

Since the activities of this department are principally confined to gas production, the cost chargeable to operation is applicable only to companies owning gas production properties. As this cost is directly related to the area of lands leased or owned, apportionment shall be made to each company in the proportion that the total number of acres of leased or owned lands of such company bears to the total leased or owned acreage of all companies.

Apportionment:

United Gas Public Service Company	42.4%
United Production Corporation	44.8%
Northern Texas Utilities Company	.5%
Houston Gulf Gas Company	5.0%
Southern Gas Company	1.5%
Southern Gas Utilities, Inc.	3.6%
Compania Mexicana de Gas, S. A.	2.2%
	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 1	Natural Gas—Production

[fol. 2031] Sheet 22

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-29	Insurance and Safety

This account shall include salaries and expenses of the insurance commissioner, safety director and insurance agent, their assistants and departments engaged in the purchasing of insurance and bonds and the handling of claims, the losses from which are covered by such contracts; the reduction of accidents caused by carelessness and otherwise and the handling of claims arising through accidents.

Detailed classification provided for this department is as follows:

154-52-29- 1	Administrative and Other Office Salaries
154-52-29- 3	Office Supplies and Expenses
154-52-29- 4	Stationery and Printing
154-52-29- 5	Telephone and Telegraph
154-52-29- 6	Traveling Expenses
154-52-29- 9	Rentals
154-52-29-10	Other General Expenses

Basis for Apportionment to Companies:

It being developed by a study of the cost of operating this department, which embraces all activities and is applicable to all companies, that forty three and seven tenths (43.7%) per cent is applicable to insurance and fifty six and three tenths (56.3%) per cent is applicable to safety,

apportionment as between the insurance and the safety sections shall be made on this basis.

The forty three and seven tenths (43.7%) per cent applicable to insurance is related to the amount of premiums paid, and apportionment shall be made to each company in the proportion that the total premiums applicable to such company bears to the total premiums applicable to all companies.

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-29 Insurance and Safety

Basis for Apportionment to Companies (Cont'd):

The fifty six and three tenths (56.3%) per cent applicable to safety is related both to workmen's compensation premiums and the number of employes, and fifty (50%) per cent shall be apportioned to the companies in the proportion that the workmen's compensation premiums applicable to each company bears to the total workmen's compensation premiums applicable to all companies; and fifty (50%) per cent shall be apportioned to the companies in the proportion that the number of employes of each company bears to the number of employes of all companies.

Apportionment:

	Production		Gas				
	Oil	Gas	Transmission	Distribution	Gasoline	Carbon Black	Total
United Gas Public Service Co.	3.0%	8.8%	28.8%	12.5%	4.6%	.3%	58.0%
United Production Corporation	2.0%	5.8%	....	.....	..	..	7.8%
Southern Gas and Fuel Company	...	...	2.3%	....	...	..	2.3%
Northern Texas Utilities Co.	...	.2%	1.1%	1.1%	...	..	2.4%
Houston Gulf Gas Company	.2%	.8%	4.4%	1.1%	...	..	6.5%
Houston Gas and Fuel Company	...	...	....	17.2%	....	..	17.2%
Southern Gas Company	...	.3%	4.1%	....	...	..	4.4%
Southern Gas Utilities, Inc.	...	.5%	.3%	.5%	...	..	1.3%
Compania Mexicana de Gas, S. A.	...	....	.1%	....	...	..	.1%
Total	5.2%	16.4%	41.1%	32.4%	4.6%	.3%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 1	Natural Gas—Production
150-52-11- 2	Natural Gas—Transmission
150-52-11- 3	Natural Gas—Distribution
150-52-11- 5	Crude Oil
150-52-11- 6	Gasoline
150-52-11- 7	Carbon Black

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-30	Land and Lease

This account shall include salaries and expenses of the land and lease superintendent, his assistants and department engaged in acquiring and handling of all lands including leases and for their proper maintenance through payment of rentals or renewals.

Detailed classification provided for this department is as follows:

154-52-30- 1	Administrative and Other Office Salaries
154-52-30- 3	Office Supplies and Expenses
154-52-30- 4	Stationery and Printing
154-52-30- 5	Telephone and Telegraph
154-52-30- 6	Traveling Expenses
154-52-30- 9	Rentals
154-52-30-10	Other General Expenses

NOTE.—Seventy five (75%) per cent of the cost of this department is chargeable to property account and twenty five (25%) per cent of the cost is chargeable to operation.

Basis for Apportionment to Companies:

Since the activities of this department are principally confined to and are incident to gas production, the cost chargeable to operation is applicable only to companies owning gas production properties. As this cost is directly related to the area of lands leased or owned, apportionment shall be made to each company in the proportion that the total number of acres of leased or owned lands of such company bears to the total leased or owned acreage of all companies.

Apportionment:

United Gas Public Service Company	42.4%
United Production Corporation	44.8%
Northern Texas Utilities Company	.5%
Houston Gulf Gas Company	5.0%
Southern Gas Company	1.5%
Southern Gas Utilities, Inc.	3.6%
Compania Mexicana de Gas, S. A.	2.2%
Total	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses.
150-52 General Office—General Expenses
150-52-1 Proportion of General Office Expenses—General
150-52-11-1 Natural Gas—Production

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses
154-52-31 Mapping

This account shall include salaries and expenses of the mapping superintendent, his

assistants and department engaged in the preparation of maps necessary for the requirements of the geological and land departments.

Detailed classification provided for this department is as follows:

154-52-31- 1	Administrative and Other Office Salaries
154-52-31- 3	Office Supplies and Expenses
154-52-31- 4	Stationery and Printing
154-52-31- 5	Telephone and Telegraph
154-52-31- 6	Traveling Expenses
154-52-31- 9	Rentals
154-52-31-10	Other General Expenses

NOTE.—Seventy five (75%) per cent of the cost of this department is chargeable to property account and twenty five (25%) per cent of the cost is chargeable to operation.

Basis for Apportionment to Companies:

Since the activities of this department are confined to the preparation of maps for the geological and land departments, the cost chargeable to operation, is applicable only, and in the same manner, to companies to which are apportioned the cost of operating the geological and land departments. Apportionment of the operating cost of the latter mentioned departments being made to companies owning production properties, on the basis of acres of leased or owned lands, apportionment of the cost of operating the mapping department shall be made to each company owning production properties in the proportion that the total number of acres of leased or owned lands of such company bears to the total leased or owned acreage of all these companies.

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-31 Mapping (Cont'd.)

Apportionment:

United Gas Public Service Company	42.4%
United Production Corporation	44.8%
Northern Texas Utilities Company	.5%
Houston Gulf Gas Company	5.0%
Southern Gas Company	1.5%
Southern Gas Utilities, Inc.	3.6%
Compania Mexicana de Gas, S. A.	2.2%
Total	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11-1 Natural Gas—Production

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses
154-52-32 Measurement

This account shall include salaries and expenses of the superintendent of measurement, and of his assistants and department engaged in the administration of gas measurement activities.

Detailed classification provided for this department is as follows:

154-52-32- 1	Administrative and Other Office Salaries
154-52-32- 3	Office Supplies and Expenses
154-52-32- 4	Stationery and Printing
154-52-32- 5	Telephone and Telegraph
154-52-32- 6	Traveling Expenses
152-52-32- 9	Rentals
154-52-32-10	Other General Expenses

Basis for Apportionment to Companies:

Since the cost of operating this department, the activities of which are confined to supervision of gas measurement, is directly related to the number of chart meter readings, apportionment shall be made to each company in the proportion that the number of chart meter readings of such company bears to the total number of chart meter readings of all companies.

Apportionment:

	Production	Transmission	Distribution	Total
United Gas Public Service Co.	33.1%	33.7%	3.6%	70.4%
United Production Corporation	3.0%	.....	.....	3.0%
Northern Texas Utilities Co.	.4%	2.3%	2.6%	5.3%
Houston Gulf Gas Company	2.8%	5.4%	.1%	8.3%
Houston Gas and Fuel Company	.....	.....	2.9%	2.9%
Southern Gas Company	.7%	4.8%	.....	5.5%
Southern Gas Utilities, Inc.	1.3%	2.0%	.2%	3.5%
Compania Mexicana de Gas, S. A.	.....	1.1%	.....	1.1%
Total	41.3%	49.3%	9.4%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 1	Natural Gas—Production
150-52-11- 2	Natural Gas—Transmission
150-52-11- 3	Natural Gas—Distribution

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-52 General Office—General Expenses

154-52-35 Right of Way and Claims

This account shall include salaries and expenses of the right of way and claim agent, his assistants and department engaged in the purchasing of rights of way, the keeping of necessary records pertaining thereto, and in the settlement of claims arising from gathering and transmission line damages.

Detailed classification provided for this department is as follows:

154-52-35- 1	Administrative and Other Office Salaries
154-52-35- 3	Office Supplies and Expenses
154-52-35- 4	Stationery and Printing
154-52-35- 5	Telephone and Telegraph
154-52-35- 6	Traveling Expenses
154-52-35- 9	Rentals
154-52-35-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are confined to gas production and transmission, is applicable only to companies owning gathering and transmission lines. (Exclusive of Compania Mexicana de Gas, S. A.) It being related to the length of pipe lines, apportionment shall be made to each company in the proportion that the total lineal miles of gathering, transmission and tap lines of such company bears to the total lineal miles of gathering, transmission and tap lines of all such companies.

Apportionment:

	Production	Transmission	Total
United Gas Public Service Company	13.8%	58.9%	72.7%
United Production Corporation	.2%	.....	.2%
Southern Gas & Fuel Company	.....	2.0%	2.0%
Northern Texas Utilities Company	.6%	7.6%	8.2%
Houston Gulf Gas Company	.9%	4.7%	5.6%
Southern Gas Company	1.1%	7.9%	9.0%
Southern Gas Utilities, Inc.	.4%	1.9%	2.3%
Total	17.0%	83.0%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 1	Natural Gas—Production
150-52-11- 2	Natural Gas—Transmission

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Sheet 29

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-38	Telephone System

This account shall include salaries and expenses of the telephone and telegraph superintendent, his assistants and department engaged in directing and supervising the transmission of messages by wire.

Detailed classification provided for this department is as follows:

154-52-38- 1	Administrative and Other Office Salaries
154-52-38- 3	Office Supplies and Expenses
154-52-38- 4	Stationery and Printing

154-52-38- 5	Telephone and Telegraph
154-52-38- 6	Traveling Expenses
154-52-38- 9	Rentals
154-52-38-10	Other General Expenses

Basis for Apportionment to Companies:

Since the cost of operating this department is applicable only to those transmission companies owning telephone lines or controlling wires under lease agreements, apportionment shall be made to them in the proportion that the miles of owned and leased telephone lines of each such company bears to the total miles of owned and leased telephone lines of all such companies.

Apportionment:

United Gas Public Service Company	69.2%
Southern Gas and Fuel Company	3.1%
Houston Gulf Gas Company	7.7%
Southern Gas Company	16.1%
Compania Mexicana de Gas, S. A.	3.9%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 2	Natural Gas—Transmission

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-41	Rate

This account shall include salaries and expenses of the rate engineer, his assistants and

department engaged in the study of rate problems, competitive situations with regard to other fuels and the designing of rate schedules for those companies having revenues derived from the sale of natural gas to pipe line or distribution customers.

Detailed classification provided for this department is as follows:

154-52-41- 1	Administrative and Other Office Salaries
154-52-41- 3	Office Supplies and Expenses
154-52-41- 4	Stationery and Printing
154-52-41- 5	Telephone and Telegraph
154-52-41- 6	Traveling Expenses
154-52-41- 9	Rentals
154-52-41-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are confined to sales prices of natural gas charged transmission and distribution customers, is applicable only to companies owning gas pipe line or distribution systems. It being developed by a time study of man hours devoted to transmission and distribution that thirty (30%) per cent of the cost of operating the department is applicable to transmission and seventy (70%) per cent of the cost of operating the department is applicable to distribution, apportionment shall be made on this basis.

Of the thirty (30%) per cent, applicable to transmission, being directly related to gross revenues and number of customers, fifty (50%) per cent shall be apportioned to companies operating pipe lines in the proportion that the total annual gross revenues derived from the sale of natural gas to transmission consumers of each company bears to the total annual gross revenues derived from the sale of natural gas to transmission consumers of all companies; and fifty (50%) per cent shall be apportioned to these companies in the proportion that the total annual average number of transmission customers of each company bears to the total annual average number of transmission customers of all these companies.

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-41 Rate

Basis for Apportionment to Companies (Cont'd):

Of the seventy (70%) per cent, applicable to distribution, being related to the number of distribution systems and to distribution customers, fifty (50%) per cent shall be apportioned to companies owning distribution systems in the proportion that the total number of distribution systems of each such company bears to the total number of distribution systems of all such companies; and fifty (50%) per cent shall be apportioned to each such company in the proportion that the total annual average number of distribution system customers of such company bears to the total annual average number of distribution system customers of all such companies.

Apportionment:

	Transmission	Distribution	Total
United Gas Public Service Company	19.2%	43.8%	63.0%
Southern Gas and Fuel Company	2.0%	.....	2.0%
Northern Texas Utilities Company	1.6%	4.9%	6.5%
Houston Gulf Gas Company	2.5%	2.3%	4.8%
Houston Gas and Fuel Company	.....	16.0%	16.0%
Southern Gas Company	3.5%	.3%	3.8%
Southern Gas Utilities, Inc.	.5%	2.7%	3.2%
Compania Mexicana de Gas, S. A.	.7%	.....	.7%
Total	30.0%	70.0%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 2	Natural Gas—Transmission
150-52-11- 3	Natural Gas—Distribution

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-52 General Office—General Expenses

154-52-45 Property Tax

This account shall include salaries and expenses of the tax commissioner, his assistants and department engaged in the rendition of property values to proper governmental agencies for ad valorem taxation, conferences with tax equalization boards or commissions with respect to such valuations and the payment of or notification to the executive department of ad valorem tax obligations.

Detailed classification provided for this department is as follows:

154-52-45- 1	Administrative and Other Office Salaries
154-52-45- 3	Office Supplies and Expenses
154-52-45- 4	Stationery and Printing
154-52-45- 5	Telephone and Telegraph
154-52-45- 6	Traveling Expenses
154-52-45- 9	Rentals
154-52-45-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, being that of rendition of values for and payment of ad valorem taxes, is applicable to all companies for which such renditions and payments are made. It being directly related to the amount of ad valorem tax assessments, apportionment shall be made to each such company in the proportion that the total ad valorem tax assessments of the company bears to the total ad valorem tax assessments of all such companies.

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154-52-45 Property Tax (Cont'd):

Apportionment:	Natural Gas			Gasoline	Crude Oil	Carbon Black	Total
	Prod.	Transmission	Distribution				
United Gas Public Service Co.	8.8%	44.8%	10.5%	2.6%	.1%	.5%	67.3%
United Production Corporation	1.2%	.....	.....	.....	3.7%	.....	4.9%
Southern Gas and Fuel Company	.....	5.0%	.....	.....	.....	.....	5.0%
Northern Texas Utilities Co.	.2%	2.2%	1.4%	.....	.....	.....	3.8%
Houston Gulf Gas Company	.4%	3.3%	.3%	.....	.....	.....	4.0%
Houston Gas and Fuel Company	.....	.....	10.0%	.....	.....	.....	10.0%
Southern Gas Company	.....	4.0%	.....	.....	.....	.....	4.0%
Southern Gas Utilities, Inc.	.2%	.4%	.4%	.....	.....	.....	1.0%
Total	10.8%	59.7%	22.6%	2.6%	3.8%	.5%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 2 Natural Gas—Transmission
150-52-11- 3 Natural Gas—Distribution
150-52-11- 5 Crude Oil
150-52-11- 6 Gasoline
150-52-11- 7 Carbon Black

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United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-46	Office Manager and Secretary

This department is applicable to all activities.

Detailed classification provided for this department is as follows:

154-52-46- 1	Administrative and Other Office Salaries
154-52-46- 3	Office Supplies and Expenses
154-52-46- 4	Stationery and Printing
154-52-46- 5	Telephone and Telegraph
154-52-46- 6	Traveling Expenses
154-52-46- 9	Rentals
154-52-46-10	Other General Expenses

Basis for Apportionment to Companies:

The cost of operating this department, the activities of which are general in nature, is applicable to natural gas, crude oil and gasoline activities. This cost shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas			Crude Oil	Gasoline	Total
	Production	Transmission	Distribution			
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-52 General Office—General Expenses
150-52-11 Proportion of General Office Expenses—General
150-52-11- 1 Natural Gas—Production
150-52-11- 2 Natural Gas—Transmission
150-52-11- 3 Natural Gas—Distribution
150-52-11- 5 Crude Oil
150-52-11- 6 Gasoline

[fol. 2044] Sheet 35

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52 General Office—General Expenses
154-52-49 Gasoline

This account shall include that portion of the salaries and expenses of the vice-president in charge of production and pipe line, and of the salaries and expenses of the production superintendent and his assistant as

is incurred in the administration of gasoline production activities.

Detailed classification provided for this department is as follows:

154-52-49- 1	Administrative and Other Office Salaries
154-52-49- 3	Office Supplies and Expenses
154-52-49- 4	Stationery and Printing
154-52-49- 5	Telephone and Telegraph
154-52-49- 6	Traveling Expenses
154-52-49- 9	Rentals
154-52-49-10	Other General Expenses

Basis for Apportionment to Companies:

Since the United Gas Public Service Company owns all gasoline facilities, that company shall be charged with the entire cost of this department.

Apportionment:

United Gas Public Service Company—100%

Account to be Charged by Company:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 6	Gasoline

[fol. 2045] Sheet 36

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-52	General Office—General Expenses
154-52-50	Compressor Stations

This account shall include a portion of the salaries and expenses of the vice-president in charge of production and pipe line and the salaries and expenses of the superintendent

of compressing stations, their assistants and departments engaged in the administration of compressing station activities.

Detailed classification provided for this department is as follows:

154-52-50- 1	Administrative and Other Office Salaries
154-52-50- 3	Office Supplies and Expenses
154-52-50- 4	Stationery and Printing
154-52-50- 5	Telephone and Telegraph
154-52-50- 6	Traveling Expenses
154-52-50- 9	Rentals
154-52-50-10	Other General Expenses

Basis for Apportionment to Companies:

Since the cost of operating this department which is applicable to gas transmission only, is related both to the number of compressor stations and to the rated horse power of them, fifty (50%) per cent of the cost shall be apportioned to each company operating compressors in the proportion that the number of compressing stations operated by each such company bears to the total number of compressing stations operated by all such companies; and fifty (50%) per cent of the cost shall be apportioned to those companies in the proportion that the total rated horse power of compressor stations operated by each such company bears to the total rated horse power of compressor stations operated by all such companies.

Apportionment:

United Gas Public Service Company	75.8%
Southern Gas and Fuel Company	7.9%
Houston Gulf Gas Company	9.6%
Southern Gas Company	6.7%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-52	General Office—General Expenses
150-52-11	Proportion of General Office Expenses—General
150-52-11- 2	Natural Gas—Transmission

[fol. 2046] Sheet 37

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-54 Other General Expenses

154-54-1 Law Expenses

The charges to this account are applicable to all activities.

Basis for Apportionment to Companies:

The charges included in this account are general in nature, and are applicable to natural gas, crude oil and gasoline activities. These charges shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

	Natural Gas					
Apportionment:	Production	Transmission	Distribution	Crude Oil	Gasoline	Total
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company.	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-54 General Office—Other General Expenses
150-54-16 Proportion of Other General Expenses—General
150-54-16-1 Natural Gas—Production
150-54-16-2 Natural Gas—Transmission
150-54-16-3 Natural Gas—Distribution
150-54-16-5 Crude Oil
150-54-16-6 Gasoline

[fol. 2047] Sheet 38

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-54 Other General Expenses
154-54-3 Other Insurance

The charges to this account being confined to premiums on group life insurance, workmen's compensation and fidelity bonds of general office employes, are general in nature.

Basis for Apportionment to Companies:

The costs included in this account being general in nature, are applicable to natural gas, crude oil and gasoline activities. These charges shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas			Crude Oil	Gasoline	Total
	Production	Transmission	Distribution			
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150 General Office and General Expenses
150-54 General Office—Other General Expenses
150-54-16 Proportion of Other General Expenses—General
150-54-16-1 Natural Gas—Production
150-54-16-2 Natural Gas—Transmission
150-54-16-3 Natural Gas—Distribution
150-54-16-5 Crude Oil
150-54-16-6 Gasoline

[fol. 2048] Sheet 39

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-54 Other General Expenses
154-54- 5 Valuation and Regulatory commission expenses

This account shall include salaries and expenses incurred in transactions pertaining to or with governmental rate regulatory bodies.

Detailed classification provided for this account is as follows:

154-54- 5- 1	Valuation
154-54- 5- 2	Accounting
154-54- 5- 3	Load Factor
154-54- 5- 4	Legal
154-54- 5- 5	Other

Basis for Apportionment to Companies:

Since the cost of this department applies only to operations within the state of Texas, and a study having developed that approximately three fourths of the total charge to the account is applicable to gas transmision and one fourth to distribution, seventy five (75%) per cent shall be apportioned to those companies operating gas pipe lines in Texas and twenty five (25%) per cent shall be apportioned to those companies operating distribution system in Texas.

Of the seventy five (75%) per cent applicable to companies operating pipe lines, apportionment shall be made to each company in the proportion that the number of owned or affiliated distribution systems and delivery points to non-affiliated companies (within the state of Texas) of gas for resale bears to the total number of owned or affiliated distribution systems and delivery points to non-affiliated companies (within the state of Texas) of gas for resale to all such companies.

Of the twenty five (25%) per cent applicable to companies operating distribution systems, apportionment shall be made to each company in the proportion that the number of owned distribution systems (within the state of Texas) of such company bears to the total number of owned distribution systems (within the state of Texas) of all such companies.

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United Gas System

General Office and General Expenses

Nature of Expenses and Basis for Apportionment

154-54- 5 Valuation and Regulatory Commission Expenses

Apportionment:	Transmission	Distribution	Total
United Gas Public Service Company	41.3%	18.9%	60.2%
Northern Texas Utilities Company	15.2%	2.7%	17.9%
Houston Gulf Gas Company	7.6%	1.3%	8.9%
Houston Gas and Fuel Company		.2%	.2%
Southern Gas Company	6.0%	.2%	6.2%
Southern Gas Utilities, Inc.	4.9%	1.7%	6.6%
Total	75.0%	25.0%	100.0%

Account to be charged by Companies:

150 General Office and General Expenses
150-54 General Office—Other General Expenses
150-54-16 Proportion of Other General Expenses—General
150-54-16- 2 Natural Gas—Transmission
150-54-16- 3 Natural Gas—Distribution

[fol. 2050] Sheet 41

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-54 Other General Expenses
154-54-11 Medical Expenses

This account shall be charged with the salary and expenses of the medical examiner, and with medical supplies.

Basis for Apportionment to Companies:

The charges included in this account are general in nature, and are applicable to natural gas, crude oil and gasoline activities. These charges shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas			Crude Oil	Gasoline	Total
	Production	Transmission	Distribution			
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	....	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-54	General Office—Other General Expenses
150-54-16	Proportion of Other General Expenses—General
150-54-16- 1	Natural Gas—Production
150-54-16- 2	Natural Gas—Transmission
150-54-16- 3	Natural Gas—Distribution
150-54-16- 5	Crude Oil
150-54-16- 6	Gasoline

[fol. 2051] Sheet 42

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154 General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)

154-54 Other General Expenses

154-54-22 Aerial Transportation Expenses

The charges to this account are applicable to all activities.

Basis for Apportionment to Companies:

The charges included in this account are general in nature, and are applicable to natural gas, crude oil and gasoline activities. These charges shall be apportioned to the companies by operating departments in the proportion that the sum of the commercial, publicity, industrial engineering, administrative-production, administrative-pipe line, administrative-distribution, chemical, dispatching, engineering and valuation, geological, insurance and safety, land and lease, mapping, measurement, right of way and claims, rate, property tax, gasoline, and compressor stations departments apportioned charges to each company by operating department bears to the total apportioned charges of these departments to all companies and operating departments.

Apportionment:	Natural Gas					
	Production	Transmission	Distribution	Crude Oil	Gasoline	Total
United Gas Public Service Company	16.6%	24.3%	22.2%	.3%	2.9%	66.3%
United Production Corporation	5.1%	....	....	2.7%	...	7.8%
Southern Gas and Fuel Company	....	1.7%	....	...	...	1.7%
Northern Texas Utilities Company	.4%	1.7%	2.8%	...	...	4.9%
Houston Gulf Gas Company	1.2%	3.2%	1.3%	...	...	5.7%
Houston Gas and Fuel Company	....	....	5.1%	...	...	5.1%
Southern Gas Company	.9%	3.4%	.1%	...	...	4.4%
Southern Gas Utilities, Inc.	1.5%	.6%	1.3%	...	...	3.4%
Compania Mexicana de Gas, S. A.	.1%	.6%	....	...	...	.7%
Total	25.8%	35.5%	32.8%	3.0%	2.9%	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-54	General Office—Other General Expenses
150-54-16	Proportion of Other General Expenses—General
150-54-16- 1	Natural Gas—Production
150-54-16- 2	Natural Gas—Transmission
150-54-16- 3	Natural Gas—Distribution
150-54-16- 5	Crude Oil
150-54-16- 6	Gasoline

[fol. 2052] Sheet 43

United Gas System

General Office and General Expenses

Nature of Expense and Basis for Apportionment

154	General Office and General Expenses—General to all companies (account carried by United Gas Public Service Company)
154-55	Maintenance of General Structures and Equipment (Telephone System)

This account shall include maintenance costs of the telephone system.

Basis for Apportionment to Companies:

Since maintenance costs of the telephone system are applicable only to those transmission companies owning telephone lines, apportionment shall be made to them in the proportion that the miles of owned telephone lines of each such company bears to the total miles of owned telephone lines of all such companies.

Apportionment:

United Gas Public Service Company	67.8%
Southern Gas and Fuel Company	3.3%
Houston Gulf Gas Company	8.0%
Southern Gas Company	16.9%
Compania Mexicana de Gas, S. A.	4.0%
Total	100.0%

Account to be Charged by Companies:

150	General Office and General Expenses
150-55	Maintenance of General Structures and Equipment
150-55- 2	Natural Gas—Transmission

[fol. 2053] Sheet 44

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150 General Office and General Expenses

150-50 General Office New Business Expenses

This account shall include specific and apportioned general office costs of natural gas transmission and distribution load building activities.

Detailed classification provided for specific charges is as follows:

150-50- 1	Rentals
150-50- 2	Advertising Salaries
150-50- 3	Advertising Supplies and Expenses
150-50- 4	Salesmanagement Salaries and Expenses
150-50- 5	Salesmen's Salaries and Expenses
150-50- 6	Demonstrations
150-50- 7	Miscellaneous New Business Supplies and Expenses

Detailed classification provided for apportioned charges is as follows:

150-50- 9- 2	Natural Gas—Transmission
150-50- 9- 3	Natural Gas—Distribution

Basis for Apportionment of Charges to Operating Departments:

Specific—The specific new business expenses, being applicable to natural gas transmission and distribution load building activities, shall be apportioned to these operating departments. This cost is directly related to the number of customers, and apportionment shall be made to these operating departments in the proportion that the annual

average number of customers of each bears to the sum of the annual average number of customers of both operating departments.

Apportioned—Since final distribution of apportioned costs has been initially determined, it is only necessary to transfer these expenses to appropriate operating accounts.

Apportionment of Specific Charges:

Natural Gas—Transmission	.9%
Natural Gas—Distribution	99.1%
Total	100.0%

[fol. 2054] Sheet 45

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150-50	General Office New Business Expenses (Cont'd):
	Account to be Charged by Operating Departments:
113-38- 1	Natural Gas Operating Expenses
113-38- 1- 2	Natural Gas—Transmission
113-38- 1- 3	Natural Gas—Distribution
93-25-19	Merchandise and Jobbing New Business Expenses—Transferred

Charges to the above operating department accounts, both specific and apportioned, shall be offset by a credit to account 150-59, "General Office Expenses—Distributed," which is the clearing account for all general office and general expenses.

The charge to account 113-38-1-2 shall be the total amount, both specific and apportioned, applicable to natural gas transmission expenses; and the charge to account 113-38-1-3 shall be the total amount applicable to natural gas distribution expenses, less an amount equal to one half of one per cent of the company's gross merchandise sales, which amount shall be charged instead to account 93-25-19.

[fol. 2055] Sheet 46

United Gas Public Service Company

Apportionment of General Office—New Business Expenses

	Total	Natural Gas	
		Transmission	Distribution
Rentals	100.0%	.9%	99.1%
Advertising Salaries	100.0%	.9%	99.1%
Advertising Supplies and Expenses	100.0%	.9%	99.1%
Salesmanagement Salaries and Expenses	100.0%	.9%	99.1%
Salesmen's Salaries and Expenses	100.0%	.9%	99.1%
Demonstrations	100.0%	.9%	99.1%
Miscellaneous New Business Supplies and Expenses	100.0%	.9%	99.1%
Proportion of General Office New Business Expenses—General:			
Commercial	71.2%	.....	71.2%
Publicity	63.5%	.....	63.5%
Industrial Engineering	56.8%	56.8%	.....
Transferred to Merchandise and Jobbing	100.0%*	.....	100.0%*

* Red in copy.

[fol. 2056] Sheet 47

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150 General Office and General Expenses

150-52 General Office—General Expenses

This account shall include specific and apportioned general office costs chargeable to operations.

Detailed classification provided for specific charges is as follows:

150-52- 1 Administrative and Other Office Salaries
150-52- 3 Office Supplies and Expenses
150-52- 4 Stationery and Printing
150-52- 5 Telephone and Telegraph
150-52- 6 Traveling Expenses
150-52- 9 Rentals
150-52-10 Other General Expenses

Detailed classification provided for apportioned charges is as follows:

150-52-11-1	Natural Gas—Production
150-52-11-2	Natural Gas—Transmission
150-52-11-3	Natural Gas—Distribution
150-52-11-5	Crude Oil
150-52-11-6	Gasoline

Basis for Apportionment of Charges to Operating Departments:

Specific—The charges included in this account are related to direct costs, and shall be apportioned to the operating departments on the basis of the proportion of direct operating expenses of each operating department to the total direct operating expenses of all operating departments. Direct operating expenses as here used is after all utilization expenses, customers expenses other than uncollectible accounts, and all direct new business expenses have been apportioned to the respective natural gas operating departments on a customer basis; and after excluding gas purchases and gas transportation charges from natural gas production expenses, fuel gas and shrinkage of gas from gasoline production expenses, and power and fuel gas and gas used in circulating systems from crude oil production expenses.

Apportioned—Since final distribution of apportioned costs has been initially determined, it is only necessary to transfer these expenses to appropriate operating department accounts.

[fol. 2057] Sheet 48

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150-52 General Office—General Expenses (Con'd):

Apportionment of Specific Charges:

Natural Gas—Production	31.2%
Natural Gas—Transmission	41.7%
Natural Gas—Distribution	20.5%
Crude Oil	.5%
Gasoline	6.1%
Total	100.0%

Account to be Charged by Operating Departments:

113-38-2	Natural Gas Operating Expenses
113-38-2-1	Natural Gas—Production
113-38-2-2	Natural Gas—Transmission
113-38-2-3	Natural Gas—Distribution
114-12	Gasoline Operating Expenses
115-12	Crude Oil Operating Expenses

Charges to the above operating department accounts, both specific and apportioned, shall be offset by a credit to account 150-59, "General Office Expenses—Distributed," which is the clearing account for all general office and general expenses.

Sheet 49

United Gas Public Service Company

Apportionment of General Office—General Expenses

General Office General Expenses:	Total	Natural Gas			Gasoline	Crude Oil	Carbon Black
		Production	Transmission	Distribution			
Administrative and Other Office Salaries	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	...
Office Supplies and Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Stationery and Printing	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Telephone and Telegraph	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Traveling Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Rentals	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Other General Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%	..
Proportion of General Office General Expenses—General:							
Administrative—General	66.3%	16.6%	24.3%	22.2%	2.9%	.3%	..
Administrative—Production	56.4%	56.2%	....	....	...	.2%	..
Administrative—Pipe Line	68.4%	....	68.4%	....	...	..	..
Administrative—Distribution	72.6%	....	....	72.6%	....	..	..
Accounting and Treasury	66.3%	16.6%	24.3%	22.2%	2.9%	.3%	..
Chemical	78.3%	78.3%	....	....	....	..	..
Construction Accounting	66.3%	16.6%	24.3%	22.2%	2.9%	.3%	..
Dispatching	70.5%	....	70.5%	....	...	..	..
Engineering and Valuation	73.7%	7.9%	34.3%	31.5%	...	..	..
Geological	42.4%	42.4%	....	....	....	..	..
Insurance and Safety	58.0%	8.8%	28.8%	12.5%	4.6%	3.0%	.3%
Land and Lease	42.4%	42.4%	....	....	...	..	..
Mapping	42.4%	42.4%	....	....	...	..	..
Measurement	70.4%	33.1%	33.7%	3.6%	...	..	..
Right of Way and Claims	72.7%	13.8%	58.9%	....	...	..	..
Telephone System	69.2%	....	69.2%	....	...	..	..
Rate	63.0%	....	19.2%	43.8%	...	..	..
Property Tax	67.3%	8.8%	44.8%	10.5%	2.6%	.1%	.5%
Office Manager and Secretary	66.3%	16.6%	24.3%	22.2%	2.9%	.3%	..
Gasoline	100.0%	....	....	....	100.0%	..	..
Compressor Stations	75.8%	....	75.8%	....	.....	..	..

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United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150	General Office and General Expenses
150-54	Other General expenses

This account shall include other general costs chargeable to operations.

Detailed classification provided for specific charges is as follows:

150-54- 1	Law Expenses
150-54- 2	Fire Insurance
150-54- 3	Other Insurance
150-54- 4	Supervision
150-54- 5	Valuation and Regulatory Commission Expenses
150-54- 6	Franchise Requirements
150-54- 7	Amortization of Franchises
150-54- 8	Employes Welfare
150-54- 9	Pensions
150-54-10	Claim Department Expenses
150-54-11	Medical Expenses
150-54-12	Injuries to Employes
150-54-13	Other Personal Injuries and Property Damage
150-54-14	Miscellaneous Accident Expenses
150-54-15	Undistributed Adjustments
150-54-17	Audit Fees
150-54-18	Donations
150-54-19	Other Miscellaneous
150-54-20	Provision for Uncollectible General Accounts

Detailed classification provided for apportioned charges is as follows:

150-54-16-1	Natural Gas—Production
150-54-16-2	Natural Gas—Transmission
150-54-16-3	Natural Gas—Distribution
150-54-16-5	Crude Oil
150-54-16-6	Gasoline

[fol. 2060] Sheet 51

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150-54 Other General Expenses (Con'td):

Basis for Apportionment of Charges to Operating Departments:

Specific—The charges made to account 150-54-5, "Valuation and Regulatory Commission Expenses," included in account 150-54, being applicable only to natural gas transmission and distribution, shall be apportioned to these operating departments on the basis of the proportion of direct operating expenses of each operating department to the total direct operating expenses of both operating departments. Direct operating expenses as here used is after all utilization expenses, customers expenses other than uncollectible accounts, and all direct new business expenses have been apportioned to the respective natural gas operating departments on a customer-basis.

Other specific costs included in account 150-54, after transfer of merchandise insurance from account 150-54-2, "Fire Insurance," to account 93-25-24, "Merchandise and Jobbing Insurance on Merchandise Stock," and transfer of automobile insurance from account 150-54-3, "Other Insurance," to account 76-4, "Transportation Expenses—Equilization," are related to direct costs, and shall be apportioned to the operating departments on the basis of the proportion of direct operating expenses of each operating department to the total direct operating expenses of all operating departments. Direct operating expenses as here used is after all utilization expenses, customers expenses other than uncollectible accounts, and all direct new business expenses have been apportioned to the respective natural gas operating departments on a customer basis; and after excluding gas purchases and gas transportation charges from natural gas production expenses, fuel gas and shrinkage of gas from gasoline production expenses, and power and fuel gas and gas used in circulating systems from crude oil production expenses.

Apportioned—Since final distribution of apportioned costs has been initially determined, it is only necessary to transfer these expenses to appropriate operating department accounts.

[fol. 2061] Sheet 52

United Gas Public Service Company

General Office and General Expenses

Nature of Expense and Basis for Apportionment

150-54 Other General Expenses (Cont'd):

Apportionment of Specific Charges:

	Valuation and Regulatory Commission Expenses	Other Specific Expenses
Natural Gas—Transmission	67.1%	41.7%
Natural Gas—Production	....	31.2%
Natural Gas—Distribution	32.9%	20.5%
Crude Oil	....	.5%
Gasoline	....	6.1%
Total	100.0%	100.0%

Account to be Charged by Operating Departments:

113-38-2	Natural Gas Operating Expenses
113-38-2-1	Natural Gas—Production
113-38-2-2	Natural Gas—Transmission
113-38-2-3	Natural Gas—Distribution
114-12	Gasoline Operating Expenses
115-12	Crude Oil Operating Expenses
93-25-24	Merchandise and Jobbing—Insurance on Merchandise Stock
76-4	Transportation Expenses—Equalization

Charges to the above operating department accounts, both specific and apportioned, shall be offset by a credit to account 150-59, "General Office Expenses—Distributed," which is the clearing account for all general office and general expenses. The sum of the charges to accounts 113-38-2-1, 113-38-2-2, 113-38-2-3, 114-12, and 115-12 shall equal the total charges in account 150-54, less amounts transferred to accounts 93-25-24 and 76-4.

[fols. 2062-2127] Sheet 53

United Gas Public Service Company

Apportionment of Other General Expenses

		Natural Gas				
	Total	Production	Transmission	Distribution	Gasoline	Crude Oil
Law Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Fire Insurance*	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Other Insurance**	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Supervision and Consultation Fees	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Valuation and Regulatory Commission Expenses	100.0%	....	67.1%	32.9%	...	..
Franchise Requirements	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Employes Welfare Department	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Pensions	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Claim Department Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Medical Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Injuries to Employes	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Other Personal Injury and Property Damage	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Miscellaneous Accident Expenses	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Undistributed Adjustments	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Audit Fees	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Donations	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Other Miscellaneous	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Provision for Uncollectible General Accounts	100.0%	31.2%	41.7%	20.5%	6.1%	.5%
Proportion of Other General Expenses—General:						
Law Expense	66.3%	16.6%	24.3%	22.2%	2.9%	.3%
Other Insurance	66.3%	16.6%	24.3%	22.2%	2.9%	.3%
Valuation and Regulatory Commission Expenses	60.2%	....	41.3%	18.9%	...	..
Medical Expenses	66.3%	16.6%	24.3%	22.2%	2.9%	.3%
Aerial Transportation Expenses	66.3%	16.6%	24.3%	22.2%	2.9%	.3%
Maintenance of General Telephone System	67.8%		67.8%			

* Insurance on Merchandise Stock transferred to Merchandise and Jobbing.
** Auto and Truck Insurance transferred to Auto and Truck Equalization.

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[fol. 2128] Defendant's Exhibit No. 8, of which the following is a true and correct transcript, was offered in evidence while the Witness M. A. Abernathy was testifying and was introduced by defendant and identified as shown on page 437, volume I, of this Statement of Facts and Transcript.

[fol. 2129] DEFENDANT'S EXHIBIT No. 8

Southern Gas Company

Carolina-Texas Field

Gathering System Investment

Estimated Investment as of November 1, 1929	$25,597.00
Rearrangement Expense November and December, 1929	7,375.00
Total Investment during year 1930	$32,972.00
Additional Expense during 1930 and 1931	8,741.00
Total Expenditures by Southern Gas Company	$41,713.00
Less Property Retirements	4,420.00
Net Investment 1931-1932-1933	$37,293.00

NOTE.—The additional expense of $8,741.00 was incurred during the latter part of 1930 and the early part of 1931, and for the purpose of this report is assumed that the effective date of all of these additions was January 1, 1931. Similarly, the property retirements of $4,420.00 (although these lines have not actually been removed) could have been made in 1930 and 1931 and the effective date of these retirements is also taken as January 1, 1931.

3-7-34.

[fol. 2130] Southern Gas Company

Computation of Reasonable Gathering Charge

Carolina-Texas Field

Years 1932-1933

The investment shown below is the estimated expenditure made by Southern Gas Company to provide South Texas Gas Company with gathering line facilities. The maintenance expense is the proportionate part of the Southern Gas Company's actual maintenance expense for the year 1933 prorated to the Carolina-Texas Field on the basis of the average of the lineal mile and 3" equivalent miles of gathering line.

Investment—Years 1932-1933	$37,293.00

Operating Expenses:

1. Return @ 7%	$2,610.51
2. Reserve for depreciation @ 10%	3,729.30
3. Gathering line maintenance	188.03
4. Supervision and general expense	259.02
Total Operating Expenses	$6,786.86

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cent per M. C. F.
1932	601,257	$6,786.86	$.0113
1933	503,238	6,786.86	.0135
Total 1932-1933	1,104,495	$13,573.72	$.0123

3-7-34.

[fol. 2131] Southern Gas Company

Computation of Reasonable Gathering Charge

Carolina-Texas Field

Years 1932-1933

The investment shown below is the estimated expenditure made by Southern Gas Company to provide South Texas Gas Company with gathering line facilities. The maintenance expense is based upon the unit cost of maintaining all gathering lines of the United Gas System during the year 1933. This is allocated to the Carolina-Texas Field on the basis of the weighted average of the cost of maintenance per lineal mile of gathering line and per gathering line meter station.

Investment—Years 1932-1933 ..... $37,293.00

Operating Expenses:

1. Return @ 7%	$2,610.51
2. Reserve for depreciation @ 10%	3,729.30
3. Gathering line maintenance	354.83
4. Supervision and general expense	259.02
Total Operating Expenses	$6,953.66

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	601,257	$6,953.66	$.0116
1933	503,238	6,953.66	.0138
Total 1932-1933	1,104,495	$13,907.32	$.0126

3-6-34.

[fol. 2132] Southern Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated investment of the Southern Gas Company in the Carolina-Texas Field gathering system. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

Investment—Years 1932-1933	$37,293.00
Operating Expenses:	
1. Return @ 7%	$2,610.51
2. Reserve for depreciation @ 3%	1,118.79
3. Operation @ 10%	3,729.30
Total Operating Expenses	$7,458.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	601,257	$7,458.60	$.0124
1933	503,238	7,458.60	.0148
Total 1932-1933	1,104,495	$14,917.30	$.0135

3-7-34.

[fol. 2133] South Texas Gas Company

Gathering Lines—Carolina-Texas Field

Reproduction Cost New, Less Depreciation, Less Retirements

Estimated Reproduction Cost:

1. Cost of System as it existed on November 1, 1929	$28,646.00
2. Cost of additions made to System after November 1, 1929	8,629.00
Total Cost	$37,275.00
Less Retirements	4,420.00
	$32,855.00
Depreciated value based on 84% condition	$27,598.00

NOTE.—The condition of the gathering system is assumed to be the same as that of the pipe line from Pescadito Junction to the Carolina-Texas Field, namely, 84%.

The property retirements listed above consist of 1369 feet of 4" pipe and 4 meter stations which could have been removed during 1930 and 1931.

3-7-34.

[fol. 2134] South Texas Gas Company

Computation of Reasonable Gathering Charge

Carolina-Texas Field

Years 1932-1933

The investment shown below is the estimated reproduction cost, less depreciation, of Southern Gas Company's gathering system in the Carolina-Texas Field. The maintenance expense is the proportionate part of the Southern Gas Company's actual maintenance expense for the year 1933 prorated to the Carolina-Texas Field on the basis of the average of the lineal mile and 3" equivalent miles of gathering line.

Investment—Years 1932-1933	$27,598.00

Operating Expenses:

1. Return @ 7%	$1,931.86
2. Reserve for depreciation @ 10%	2,759.86
3. Gathering line maintenance	188.03
4. Supervision and general expense	259.02
Total Operating Expenses	$5,138.71

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	601,257	$5,138.71	$.0085
1933	503,238	5,138.71	.0102
Total 1932-1933	1,104,495	$10,277.42	$.0093

3-7-34.

[fol. 2135] South Texas Gas Company

Computation of Reasonable Gathering Charge

Carolina-Texas Field

Years 1932-1933

The investment shown below is the estimated reproduction cost, less depreciation, of Southern Gas Company's gathering system in the Carolina-Texas Field. The maintenance expense is based upon the unit cost of maintaining all gathering lines of the United Gas System during the year 1933. This is allocated to the Carolina-Texas Field on the basis of the weighted average of the cost of maintenance per lineal mile of gathering line and per gathering line meter station.

Investment—Years 1932-1933	$27,598.00

Operating Expenses:

1. Return @ 7%	$1,931.86
2. Reserve for depreciation @ 10%	2,759.80
3. Gathering line maintenance	354.83
4. Supervision and general expense	259.02
Total Operating Expenses	$5,305.51

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	601,257	$5,305.51	$.0088
1933	503,238	5,305.51	.0105
Total 1932-1933	1,104,495	$10,611.02	$.0096

3-7-34.

[fol. 2136] South Texas Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated reproduction cost, less depreciation, of the Southern Gas Company's gathering system in the Carolina-Texas Field. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

Investment—Years 1932-1933	$27,598.00
Operating Expenses:	
1. Return @ 7%	$1,931.86
2. Reserve for depreciation @ 3%	827.94
3. Operation @ 10%	2,759.80
Total Operating Expenses	$5,519.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	601,257	$5,519.60	$.0092
1933	503,238	5,519.60	.0110
Total 1932-1933	1,104,495	$11,039.20	$.0100

3-7-34.

[fol. 2137] South Texas Gas Company

Computation of Reasonable Gathering Charge, Carolina-Texas Field, on Basis of Gas Produced from Sands Known November 1, 1929

Years 1932-1933

The investment shown below is the estimated reproduction cost, less depreciation, of Southern Gas Company's gathering system in the Carolina-Texas Field. The maintenance expense is the proportionate part of the Southern Gas Company's actual maintenance expense for the year 1933 prorated to the Carolina-Texas Field on the basis of the average of the lineal mile and 3" equivalent miles of gathering line.

Investment—Years 1932-1933	$25,799.00
Operating Expenses:	
1. Return @ 7%	$1,805.93
2. Reserve for depreciation @ 10%	2,579.90
3. Gathering line maintenance	188.03
4. Supervision and general expense	259.02
Total Operating Expenses	$4,832.88

Unit Operating Expense:

Year	*M. C. F. Gathered (2#-14.4#)	Expense	Cost per M. C. F.
1932	375,163	$4,832.88	$.0129
1933	308,569	4,823.88	.0157
Total 1932-1933	683,732	$9,665.76	$.0141

[fols. 1-186] [File endorsements omitted]

* Note.—M. C. F. gathered on this statement includes [fols. 2138-2472] only gas produced from sands known to exist on November 1, 1929. The production from the 2200' sand has been excluded as it was not discovered until 1931. 3-7-34.

[fol. 187] **Defendant's Exhibit No. 13**

Testimony of A. D. GREENE

By Mr. Lange:

Q. Now, Mr. Greene, with reference to the transmission lines that you say are used and useful in serving Laredo, you say this map correctly represents the line shown in red as being the one necessary and used and useful in serving the City of Laredo?

A. Yes.

Q. For the reporter's record, in order to get this accurately, this is the point on this map marked "Aguilares"; that is a junction point?

A. Yes.

Q. That is on the main transmission lines between Laredo and Carolina-Texas field?

A. Yes.

Q. This line that runs from Aguilares to Mirando City and to Oilton, under what theory do you include that in the transmission line used and useful to serve the City of Laredo?

A. That is part of the interconnected system used to serve Laredo.

Q. In what way does it serve Laredo?

A. It is part of the interconnected system.

Q. Isn't the line to Roma a part of the interconnected system?

A. Yes.

Q. Is it used and useful to serve Laredo?

[fol. 188] A. No sir.

Q. Then why include this?

A. In this particular line from Aguilares to Oilton we have allocated a portion of our transmission appraisal out on the basis of M. C. F.

Mr. Coates: That is a portion of your entire transmission appraisal?

A. Yes.

Q. Why then didn't you include the Roma line in that allocation?

A. That is not within the system that serves Laredo.

Q. That is true, but supposing there was a line running from Aguilares, and running down to Hebronville, would you include that in the same system?

A. Yes, if there were such a line we would include it.

Q. And the Laredo meters being the greater number, their allocation would get the worst of it?

A. No sir, I believe in our figures, I have not checked this, but I believe we have given Laredo a break in the way we figured it.

Q. That is just a concession then?

A. No sir, because we believe that is the proper method of figuring it.

Q. You say you are positive that this line from Aguilares to Mirando City and Oilton, that serves consumers, and does not gather any gas, is a part and parcel of the trans- [fol. 189] mission line system used and useful in serving the City of Laredo?

A. Yes, and at one time part of that line was used in serving Laredo over there.

Q. Wasn't that line taken up and put back again to serve Mirando?

A. It was taken up.

Q. After its usefulness was expired?

A. Yes.

Q. And its only useful purpose was to serve Oilton and Mirando City?

A. Yes, and we have allocated that out.

Q. I want to know how that line is useful to serve Laredo?

A. It is a part of our interconnected system that serves Laredo.

Commissioner Thompson: Is it true that no gas flow- through that line towards Laredo?

A. No gas flows at this time from Mirando City or Oilton to Laredo; we have made the allocation on that basis.

Mr. Coates: That is, the entire interconnected system in there has first been appraised, and then a portion of the entire interconnected system has been allocated out, and deducted.

Commissioner Thompson: But there is no useful purpose, so far as Laredo is concerned, on that line?

Mr. Coates: At this time there is no gas flowing through that line towards Laredo. It is still installed, and at some [fol. 190] future time gas may flow through there, but what we have taken here is the transmission system which is interconnected, and takes its gas from widely separated points, and having taken that, we have allocated a portion

of that entire system, Carolina-Texas, Jennings, and everything else to those smaller towns, Mirando City and Oilton, and have allocated only a portion of those lines to Laredo, and so it is a complete allocation.

Mr. Stanberry: Mr. Coates, if you should just eliminate that line, and take out that percentage of the allocation on the meter basis, do you figure it would make much difference; if you left the line out of the picture, and left the income out of the picture?

Mr. Coates: And then put in against Laredo the whole of the Laredo line?

Mr. Stanberry: Yes.

Mr. Coates: I think not, Mr. Stanberry, although I have not made, or had made, anything except quick figures on that, and the quick figures indicated it would make very little difference, and if there was a difference it would be in favor of Laredo.

Mr. Stanberry: The cost of the whole interconnecting system is distributed on a meter basis?

Mr. Coates: On an M. C. F. basis.

Mr. Stanberry: And the meters at Mirando City and Oilton are deducted from the whole picture; that is, they [fol. 191] are given their proper share?

Mr. Coates: The M. C. F. deliveries, or a portion based on that, is deducted.

Mr. Stanberry: Does that include the industrial at Mirando City?

Mr. Coates: Yes, miscellaneous pipe line sales, industrial and commercial and residential and everything else.

A. We have taken out 7.15 per cent to provide for that.

Mr. Coates: We have not given consideration to the direction in which gas is flowing in this month of October.

Commissioner Thompson: You are not required to do that.

Mr. Coates: Yes. And of course the reason we took the Laredo section, and not the Roma section, is because that line does not bring any gas, and we do not contemplate that that Roma line will ever bring any gas in the immediate future into this section, and so we have taken that transmission system and set apart and appraised the Laredo section of that Mirando section, and have allocated that Laredo section to the various towns served by that section.

Mr. Lange: The Commission could readily see that that

allocation would not reflect a fair percentage to the City of [fol. 192] Laredo, because the M. C. F. consumed, I think the record will diclose, is so far less to these two places, taking into consideration the length of line pipe used in that average, that it would be an unfair allocation to Laredo to include that unnecessary unit.

Mr. Stanberry: I want you to develop this feature of it, and that is why it was made on an M. C. F. basis instead of a meter basis, this allocation of investment expense, because in the smaller towns the M. C. F. per consumer is a whole lot less than in the larger towns, and I would like to know what difference it would make if these allocations were made on a meter basis instead of an M. C. F. basis.

Mr. Lange: Of course, we believe in either event on that particular line, Laredo would not get a fair percentage, because of the small number of meters they have, as compared with Laredo, and if Laredo does not need that line I see no good readon for making any allocation that would place a burden on Laredo; we have such a large number of meters as compared with them.

Mr. Coates: Then we would have to put back into the appraisal 100 per cent as to the remainder of the line.

Mr. Lange: We get all this without an extra burden being placed on us, and the others are on the main line transmission system.

Commissioner Thompson: The point you are making is [fol. 193] as to whether or not it is advantageous to Laredo or how it comes out, it should come out?

Mr. Lange: Yes.

Commissioner Thompson: You can prove that by your own witnesses.

Mr. Coates: You mean he can offer testimony on it?

Commissioner Thompson: He can endeavor to prove it, Yes.

Mr. Lange: We will try to prove that.

By Mr. Lange:

Q. Now, Mr. Greene, of course you do not know, or have not testified as to from which area gas is being taken to serve Laredo during the past year?

A. No sir.

Q. The gathering systems that you have in your appraisal; where do they lie?

A. In the Jennings field.
Q. Show it on the map.
A. The red line shown there in the Jennings field.
Q. The red line shown in the Jennings field?
A. Yes.
Q. What is the total mileage of those lines?
A. I could not tell you.
Q. Are they of different size?
A. Yes.
Q. What size mains are those, outside diameter?

[fol. 194] Mr. Stanberry: Is all of the Jennings system charged to Laredo?

A. No sir.

Mr. Stanberry: Is it allocated on the basis of M. C. F. coming to Laredo and going to Roma and to Houston?

A. No sir.

Mr. Stanberry: How is it allocated?

A. A portion of it is allocated on the basis of 30 per cent to Laredo and 70 per cent to the Monterrey line.

Commissioner Thompson: You had five methods of dividing that, and that is what you gave us yesterday?

A. Yes.

Commissioner Thompson: You had five factors, and took a composite of it?

A. Yes, those lines scale down from 8 and five-eighths inches O. D. down to 2 and three-eighths inches O. D.

Q. Can you give the Commission the total mileage in this part of your gathering system; that is, the one line, I suppose it would be southeast of the line running from Jennings Junction to Jim Hogg, marked in red on the map here?

A. Yes, that consists of 13,856 feet of 8 and five-eighths inch O. D., 11,308 feet, 6 and five-eighths inch O. D.; 9,114 feet of 4 and one-half inch O. D., and 368 feet of 2 and three-eighths inch O. D.

[fol. 195] Q. And the total number of feet.

A. I have not got it, but I can add it up for you.

Q. All right.

A. 34,646 feet.

Q. What do you show is the depreciated value of that as a total?

A. I have not got it totalled; I have 30 per cent of it totalled.

Q. Can you estimate the total?

A. It would be a rather long calculation; I would have to multiply each of them out in units.

Q. Can you give that to the reporter?

A. I can give you approximately what it is by working it out on the slide rule.

Mr. Stanberry: That back line from Carolina-Texas Junction to the Jennings Junction, that line there, that green line, supplies the Rio Grande Valley Gas Company, and the two principal sources of supply is at Bruni and at Jennings; on that theory does that gathering system to the southeast, and that part of the red and green line, that any part of it is allocated to Laredo, when the two sources of supply are Jennings and Bruni?

Mr. Lange: Yes, and we will prove to the Commission later that that belongs out, and that it is neither used nor useful to serve Laredo.

Mr. Coates: You will prove that?

[fol. 196] Mr. Lange: Yes, I am not a prophet or a son of a prophet, but we will do that.

Commissioner Thompson: It is my understanding that neither the green nor the red and green lines are charged to Laredo.

A. That is correct.

Commissioner Thompson: You testified that they were not yesterday?

A. Yes.

By Mr. Lange:

Q. But this was charged to Laredo, this solid red.

Commissioner Thompson: And you are challenging that?

Q. Yes.

Mr. Coates: 30 per cent of that was charged up.

Q. We are challenging the total item there.

Commissioner Thompson: 30 per cent of it, or whatever is charged is what you are challenging now?

Q. Yes.

A. It is about $35,000 reproduction cost new on that; no, that is $35,000 depreciated; that is the cost new less depreciation, and about $42,200 would be the cost new.

Q. $35,000 depreciated, and $42,200 cost new?

A. Yes.

Q. As I understand it, that is the gathering system in a distance approximately southeast of the main line from [fol. 197] the Jennings Junction to the Jim Hogg Junction, which main line is shown on the map in checkers of red and green; is that correct—that is, this gathering line you have just given the reporter the value on lies approximately southeast of the main line shown on the map as Jennings Junction to Jim Hogg Junction line, shown in blocks of red and green?

A. Yes, that is correct.

Q. And this total gathering line is shown entirely in red?

Commissioner Thompson: That is in the Jennings field?

Q. In the Jennings field. Mr. Greene, do you know when this gathering line was put in?

A. No sir.

Q. Who would know in your organization?

A. I do not believe there is anybody in our organization who is present here that could testify to that.

Q. Have you available any records which would reflect when that gathering system was put in, or approximately how long it has been in?

A. I think we can find out.

Q. Have you any idea in making your appraisal, did you endeavor to find out about when that was put in?

A. No sir.

Q. Do you know why that was put in, why that gathering system was put in?

A. I only know that it was put in in order to gather the [fol. 198] gas in that area.

Q. But you do not know when?

A. No sir.

Q. And you don't know why? You do not know what territory it was intended to serve when it was put in?

A. No sir.

Q. Do you know of anyone in your organization who would know that?

A. You mean present here, no sir.

Q. Where would they be located?

A. We could get that information out of Houston.

Q. Who in Houston would have that available?

A. Our superintendent of production.

Q. What is his name?
A. Ed Parks.

Mr. Stanberry: Wasn't that back loop put in there when the high pressure gas was found at Jennings in order to supply the Houston line, or the San Antonio line?
A. I do not know, sir.

Q. Mr. Greene, do you know what areas this Jennings field serves gas to in that area, what pipe lines, or what towns?
A. In a general way, yes. That feeds gas into the South Texas gas going to Roma, and in the line going to Laredo.
Q. Any other lines?
A. I think not, no sir.
[fol. 199] Q. When did it serve Laredo, do you know?
A. There is gas in that line constantly.
Q. Were there any deliveries during the fiscal year ending July 31, 1932?
A. Yes.
Q. Do you know approximately how much?
A. No sir.
Q. Is that record available?
A. I think so.
Q. Where, here or at Houston?
A. Here, I believe.
Q. Who would have that information?
A. I think Mr. Coates could give you that information, I am not certain.
Q. Do you think that Mr. Coates, or is there anyone in Laredo who can give that?

Mr. Coates: Yes, I expect there are a half dozen who could.

Q. The amount of gas in the fiscal year ending July 31, 1932, from Jennings Junction.

Mr. Coates: Yes sir.

Q. In other words, that is an open line, and has been open all of last year?
A. It was not open all the year, it was down part of the year for repairs.
Q. That is why it was closed?
A. Yes.

[fol. 200] Q. Do you know—you stated that in your opinion the gas that is gathered in this gathering system in this Jennings area just served the Laredo area and Monterrey?

A. In general, yes. So far as I know, there is no gas that goes in the other direction.

Q. There is no gas going north to the Jim Hogg Junction?

A. I think not, but I am not positive about it.

Q. And the Jim Hogg Junction, there is a dotted black line going in a southeast direction marked "Going to Rio Grande Valley points."

A. Yes.

Q. And this line is running in a northeast direction here up to San Antonio, and also on to Houston?

A. Yes.

Q. And the dotted 12 inch line on here marked "To Roma" is a transmission line which carries gas to Monterrey, Mexico?

A. That is right.

Q. Do you know the distance from Jennings Junction to Roma, the lineal feet of that pipe line?

A. It is 46 or 48 miles.

Q. Between 46 and 48 miles?

A. Yes.

Q. 47 would be an average?

A. I think I can give you that figure. I think it is about 47 miles.

[fol. 201] Q. Do you know when that was connected on to the Jennings Junction?

A. No sir, I do not know the date that line was built.

Q. Does your company have a map showing the wells and the names of the well- that are hooked up in this Jennings area on all the gathering lines in the Jennings area?

A. Yes.

Q. Who would have that available?

A. I think I have one of those.

Q. Does that name the wells so they could be identified on there?

A. Yes.

Q. Could you give the reporter the wells that are hooked up in that Jennings area by name?

A. I think so, yes, as shown by my map.

Q. Does that map you have accurately reflect the total number of wells hooked up in that area?

A. It was given to me to reflect that data.

Mr. Coates: Is that the wells hooked up at this time, or when was that map made?

A. This is corrected as of the 27th of September.

Q. Of 1932?

A. 1932.

Q. All right.

A. We have Cuellar No. 1; South Texas Production Com-
[fol. 202] pany, Jennings No. 10; South Texas Production Company, Jennings No. 5.

Q. Now, for the record, as soon as you get through with all wells hooked up on the Jennings line that connects at Pescadito, will you stop then so we can distinguish those wells from the wells on the other gathering systems?

A. Yes. South Texas Production Company, Jennings No. 1; No. 2 and No. 4; that comprises a list on that line.

Q. They are hooked on to the line Jennings Junction, and running northwest to the main line junction at Pescadito?

A. Yes.

Q. All right, now the wells that are at present connected to the gathering system about which you testified to awhile ago as being represented entirely in red and lying southeast of the checkered red and green main transmission lines.

A. All right. That is Killiam Martinez No. 1; United Production Corporation, Martinez No. 1, No. 5, No. 3 and No. 4; South Texas Production, Martinez No. 1; South Texas Production, Jennings No. 6; South Texas Production Company, Gutierrez No. 1; that is 8 wells.

Mr. Stanberry: Right here is one thing I want to ask at this time. Is this production that is up on the Jennings to Laredo line, is that the new field, and high pressure gas, or is the new field and high pressure gas on that gathering system over to the southwest there?

[fol. 203] A. I cannot answer that, Mr. Stanberry; I can tell you what I think. I think that they do——

Mr. Coates: Never mind about guessing; if you want to know that we will get somebody who is in the transmission department who can tell you.

Commissioner Thompson: The witness says he does not know.

Q. We would like to know; who in your organization can give us that information?

Mr. Coates: We will have him on the stand so you can question him.

Q. All right. Getting back to your answer, those wells that you have just given the names of constitute all the wells in this Jennings area that are hooked on to the two main transmission lines, one line running from Jennings to Pescadito, and the other from Jennings to Jim Hogg Junction?

A. I think I missed one. This is Southern Gas Utilities Hinnant No. 4.

Q. On which line is that?

A. Here.

Q. That is on the main transmission line between Jennings Junction and Jim Hogg Junction?

A. Yes.

Mr. Coates: Mr. Greene, if I may interrupt, what you are testifying to, is the wells that were hooked up as of Septem-
[fol. 204] ber 27, 1932; you are not attempting to say these are all the wells that were hooked up during the 12 months preceding, or that all of these wells have been hooked up during the 12 months preceding, but that is the spot for that day?

A. That is right, and that is the information contained on my map which was given to me.

Q. Then I suppose there is someone in your organization who can give an accurate list of the wells from which gas was delivered into the transmission system for the fiscal year ending July 31, 1932?

A. I believe so.

Q. And where that gas was delivered to?

A. Yes.

Q. I do not know whether you stated or not whether you knew what field is supplying the Rio Grande Valley line shown in black?

A. That is being supplied from the Bruni field.

Q. Entirely or not?

A. It is entirely at present.

Q. I mean in the past fiscal year.

A. I think not in the past year, no.

Q. Do you know whether any of this gas out of the gathering system that you have given the value on shown entirely in red was delivered to Jim Hogg Junction for the valley points?

[fol. 205] A. It was not none of it, no sir.

Q. Do you know how much, if any, or all of the gas out of this red gathering system you were speaking of, was delivered to Roma?

A. I do not have the percentage.

Q. Do you have someone in your organization who has that accurately for the past fiscal year?

A. Yes.

Q. Now, with reference to the gathering line, have you any gathering lines that you are still including in your appraisal, the line of the Carolina-Tex. field?

A. No sir.

Q. Whose gathering lines are these shown in green?

A. The Southern Gas Company.

Q. Do you have a list of the gas wells hooked on to the South Texas line marked 13.5 miles, 6 inch, at the extreme northeastern end of the South Texas line, have you a list of the wells hooked on to that line?

A. I have a list of them, a similar list to the one I just gave you, yes.

Q. All right, for the record, that line is marked in red on the map.

Mr. Coates: That is the transmission line is so marked?

The transmission line, yes.

A. Do you want me to read all of these?

[fol. 206] Q. How many are there? Just give us the total number of them.

A. I count 12.

Mr. Stanberry: That map over there shows 14.

Q. I am speaking, Mr. Greene, south of this checkered black line, this black mark here which mark appears at the end of the 13.5 mile line, transmission line shown in red.

A. South of there there are none.

Q. None hooked on there at all?

A. No sir.

Q. Where is the division line valve of the South Texas line on this 13.5 miles main line, and the Southern?

A. It is the meter station at the black square shown there.

Q. That is the meter station; is that the cut off valve? Is that the end of the line?

A. That is the end of the South Texas Gas Company's line.

Q. The green portion that continues on is Southern Gas?

A. Yes.

Q. And then the one here that is checkered, that is the

main transmission line of the Southern Gas Company connecting up with the San Antonio transmission line?

A. That is right.

Q. Then from the black squares shown on the map as representing the end of the 13.5 miles main transmission line, there are no wells hooked on to the line southwest of that?

A. No sir, there are not.

[fol. 207] Q. None whatsoever?

A. No sir.

Q. Then any gas that goes into Laredo on that line would come out of what wells?

A. They would come out of the well in the Carolina-Tex. field; I do not know which particular well by name.

Q. They may be connected on to this green system?

A. Yes.

Q. Which is immediately southeast of the end of the 13.5 main transmission line shown in red.

A. Northeast.

Q. Northeast. Is there any gas serving Laredo during the last fiscal year that has come through the 13.5 mile line that would be gathered in this gathering system shown in green?

A. Yes.

Q. And south of that black division line there were no wells hooked up last year?

A. No sir.

Q. Did you say that the number of wells shown in this green gathering system reflected the correct number during the past fiscal year?

A. No sir.

Q. Some go on and some go off?

A. Yes.

Q. But your company has accurate records on that and will show it?

[fol. 208] A. Yes.

Q. As to which wells delivered gas to Laredo in the past fiscal year?

A. Yes sir.

Q. You do not know of your own knowledge, of course, where Laredo got its gas in the past fiscal year, as to whether it came from this Carolina-Tex. field area or the Jennings area?

A. I know it got gas from both sources, but I cannot give you the amounts.

Q. Beginning at the Jennings Junction and proceeding northeast along the main transmission line shown in checkers of red and green, and continuing on in the main transmission line shown in green; that is a continuous main transmission line serving San Antonio and Houston?

A. No sir, that is not correct. The gas flows the other way there.

Q. Entirely?

A. Yes.

Q. The gas coming out of the Bruni field goes to Monterrey?

A. It may go to Monterrey, yes.

Q. Do you think any of it may go to the Rio Grande Valley?

A. Yes, that is the principal source of supply for the Rio Grande Valley.

Q. And it only flows in a southerly direction, and none of it goes north?

[fols. 209-223] A. No sir.

Q. Do you know how much of the gas of this Carolina-Texas field, or do any of your men know, shown in the green gathering line system, is delivered to the main transmission line shown going to San Antonio or Houston?

A. There is none going that way now, but I am not certain about the past fiscal year.

Q. When this line is utilized—the one in green checkers is the one that I am talking about, running in a southeasterly direction to the Carolina-Tex. Junction—the gas that is delivered through that line goes in a southeasterly direction; does any of it ever come back northwest?

A. I would not be able to answer definitely on that.

Commissioner Thompson: Since none of that is charged to Laredo, is that important?

Q. I think it may be relevant, and I wanted it in the record, if he knows.

Commissioner Thompson: It is clear none of it is charged to Laredo, none of it except those in red.

Q. None of it except those in red; yes, that is correct.

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[fols. 224-301] Q. Now, the item of going concern value appearing on sheet 1 in column 4, $155,082; in what manner did you arrive at that percentage?

A. That is 12 and one-half per cent.

Q. Of what item?

A. That is 12 and one-half per cent of the total, including general construction expenditures.

Q. Name the figure.

A. On page 1 of Exhibit 1 it is $155,082.

Q. That was computed against what figure?

A. $1,240,655.

. . . . . .

[fol. 302] Whereupon the witness P. McDonald Biddison was recalled to the stand, and testified as follows:

Cross-examination.

By Mr. Bobbitt:

Q. How long have you lived there?

A. Since 1923.

Q. At this time are you connected with the United Gas System?

A. I am not except for my connection in this particular case, being retained in this instance by the United Gas System.

Q. You are retained to testify in this case?

A. In this particular case, yes.

Q. By the United Gas System?

[fol. 303] A. Yes.

Q. Are you employed regularly by any utility concern?

A. At the present time I have a retainer from the Lone Star Gas Corporation; that is the only retainer I have at this time.

Q. Otherwise, you are just in the general engineering practice?

A. That is correct, and I am free to take on employment wherever the opportunity is offered.

Q. But you have no regular employment with any concern other than the retainer by the Lone Star Gas?

A. That is correct.

Q. You have testified as an expert, as you have testified here now, in quite a number of rate cases, have you not, Mr. Biddison?

A. Several, but not a large number, no.

Q. You testified in the Lone Star in the Fort Worth case?

A. I did.

Q. On behalf of the Lone Star Gas Company?

A. On behalf of the Fort Worth Gas Company.

Q. That is a subsidiary of the Lone Star?

A. It was at that time.

Q. It is all one outfit?

A. It was at that time a subsidiary of Lone Star Gas.

Q. What other companies of that nature have you testi- [fols. 304-357] fied for in the past 2 or 3 years?

A. That was the first rate case in which I testified. I have since testified in, I believe, two rate cases in Alabama; I testified before the Texas Commission in the Childress rate case, and before the Texas Commission in the Royce City Texas case, and before the Kansas Commission in the Cities Service case, and I believe that is the complete list.

Q. In all of these case-, I understand—is it true or is it not true, you have appeared and testified on behalf of the utility?

A. That is correct.

Q. You have never been employed and testified on behalf of municipalities or a concern that was operated or being considered from the standpoint of the public?

A. I have never been employed in any such matter by any municipal or governmental organization.

Q. And over this long list of experience and qualifications you testified about, those employments have been by utility concerns, and you have been working for utility concerns?

A. No, not always utilities; by gas and oil companies.

* * * * * * *

[fol. 358] Mr. Coates: Dealing now with the net rate of return?

A. Yes.

Q. You then would not consider the important element of economy of operation as interesting the investor?

A. Yes, that should be given consideration.

Q. Equal weight with the others?

A. It must be given its full weight and value, yes.

Q. You would not consider the element of low rates as interesting the investors?

A. Yes, the rates would interest the investor, certainly.

Q. I mean low rates, and not just rates.

[fol. 359] A. Yes, they would be given consideration.

Q. And given equal consideration?

A. It would be given full consideration.

Q. And isn't it a fact that lower rates automatically increase consumption immediately?

A. They sometimes do.

Q. It depends on the fact in connection with any particular situation?

A. Yes, but I would not say that was a general rule; it may or may not do so.

Q. And you, of course, realize, and take into consideration the present financial depression that is prevalent in the country?

A. Regardless of that, if people have use for only a given amount of a commodity they are not going to buy more of it simply because the price is reduced.

Q. Taking into consideration the effect of the present economic and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression?

A. That the distributor and the transmitter share equally in it?

Q. Share equally with the user in bearing the burden of that depression.

Mr. Coates: Just a moment here. I do not know that [fol. 360] I understand Mr. Lange's question, but I think it is directed as to whether or not a utility should forego all or a part of a fair return in a period of depression. This case has been set up on what a utility should earn on its present fair value, and that is all that it is asking for. Of course it is common knowledge that during times of depression users have their troubles, and utilities have their troubles, and I hardly think it is material, or will serve any useful purpose to ask this witness whether or not he thinks the operating officials in responsible charge of the operation of this company, should forego any part of

a fair return as a charitable proposition, and we object to it as not material.

Mr. Lange: We are not urging it as a charitable proposition, but we are simply urging it as a consideration that Commissions have and courts have taken into consideration in viewing the factor of a fair return or fair rate of return, and what would constitute a fair rate of return under the existing circumstances, and as a circumstance, we think it has a place in the record in this case.

Commissioner Thompson: You mean the depression?

Mr. Lange: Yes sir, and I am not trying to mislead the Commission in any way in that respect, but we can, at the proper time, produce ample authorities on that, that as a circumstance it has the proper place in this record, and for that reason I think the witness should testify and give his [fol. 361] opinion on it.

Mr. Coates: In the only case I know of where a Commission has attempted to reduce a utility below a fair return over and above the cost of the service, the order has been promptly enjoined, and is now enjoined.

Mr. Lange: I think the Supreme Court of the United States has expressed itself on that very question, and that that question has the proper place in the record, and should be considered by the rate making body, and we will give the Commission ample authority on that.

Commissioner Thompson: We sometimes make distress rates, or distress conditions, like freight rates, but in making rates for a utility it must take into consideration a long range of time, and not a distress period.

Mr. Lange: Yes, and the rate making body must take into consideration what the service is worth to the user, and what he is able to pay for it, and it has weight in arriving at the question of what the fair rate should be in effecting that rate base.

Commissioner Thompson: That is very interesting to me.

Mr. Lange: We can show the Commission authorities on that.

Commissioner Thompson: You mean the ability to pay?

Mr. Lange: Yes, and we think it has a proper place in [fol. 362] the record for what consideration the Commission may wish to give it. It has a bearing on the rate you finally fix, and we can support that by authority.

Mr. Stanberry: Your contention is that what might be a fair rate today might not be a fair rate under a different state of conditions.

Mr. Lange: Yes, and we think it is a circumstance that the Commission should have before it, and take into consideration, and whatever weight is given it would depend on the circumstance as reflected by the entire record, but it has a place in the record that the Commission should have before it when it arrives at its final decision. We can support that by authority and we think it has a place in the record, and honestly believe it is supported by authority, and if the Commission later thinks it ought to come out we will be glad to have it stri-ken out if we do not support it by authority.

Mr. Coates: Conceding that would be true, without admitting the gentleman's position, we then say that there is a proper method of proof as to the item he suggests, and that the proper method of proof is not propounding to an engineering witness a question of law such has has been propounded here.

Commissioner Thompson: The Commission will rule that we cannot, in this case, consider depressed conditions. The case has been presented on present replacement values, [fol. 363] and that in itself takes into consideration fully the present price of the commodities that go into this system.

Mr. Lange: That is true.

Commissioner Thompson: And so we are considering today's prices, and present replacement values, and I think that is as far as we would care to go.

Mr. Lange: That is in connection with the physical values, and I am speaking now in connection with the fair rate of return as to what the rate payer is able to pay; we can support that by authority, as I say, and believe the Commission should take it into consideration in arriving at the fair rate of return. Not as to the physical value of the property, but when you get to the point of analyzing the entire record, and reaching a fair rate of return.

Commissioner Thompson: I know of no way except to take the value of the property, and find out what is a fair return on that, and the law has limited us to 10 per cent; we cannot go beyond that. We can find something reason-

able, perhaps, not so high, but that is the rule, and if the commodity is too high, the business will have to go without customers.

Mr. Bobbitt: If the Commission please, it seems to us there can be no injury done unless it is through an exclusion of this testimony. If we are wrong in our view of the matter, the Commission may disregard the testimony, but [fol. 364] if we are right, and the Commission has refused to receive the testimony, then we are denied our right——

Commissioner Thompson: As to the question of considering it, we will have to reserve decision, but as to the question of denying you that right to put it in, we will not do that.

Mr. Coates: We most respectfully insist upon our legal objection as to the legal admissibility of the question.

Commissioner Thompson: We will note the objection.

Mr. Coates: May it be understood without the necessity of repeating our objection, that it goes to the entire line of testimony?

Commissioner Thompson: That will be so understood.

Mr. Lange: Will you read the question to the witness?

"Q. Taking into the consideration the fact of the present economical and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression."

Commissioner Thompson: You are asking that question as a good business policy, or as an expert opinion?

[fol. 365] Mr. Lange: We are asking for his expert opinion.

Mr. Coates: He is qualified as an expert engineer, and as an expert engineering witness, and likewise as an operator, and an engineer and builder of properties, but not as a professor of economics or as to economic theories, or anything of that sort.

Mr. Lange: He has given us a long dissertation on the elements of securing capital, and the elements that go into that.

Mr. Coates: Yes, in direct connection with his experience in the business, but not on the general economic theory.

Mr. Bobbitt: I didn't know he left that out.

Commissioner Thompson: Go ahead.

A. I do not think it is equitable to require a utility to accept less than a fair rate of return on the value of its property and business, because its customers may be bearing the burden of a depression, for the reason that the utility will not later be allowed to earn more than a fair rate of return, and recoup the deficiency.

By Mr. Lange:

Q. Whenever that point is reached, that they are finding that they are not making a fair rate of return, if the situation is different the rate making body is at their disposition, isn't it?

A. The rate making body may, at a later date, set a fair [fol. 366] rate of return, but the rate making body has no authority, as I understand it, to ever grant them what would be more than a fair rate of return, and therefore, during any period when their rate of return is less than a fair rate of return, they have suffered a lack of return which they can never recoup.

Q. What is your opinion with reference to the rate that should be exacted from the rate payer in comparison with the service rendered, and the work of the service rendered?

Mr. Coates: Just a moment. We object to the term "exacted" because nobody compels anybody to take gas.

Q. I am using the expression that the courts use.

Commissioner Thompson: You mean charged?

Q. I would use the term charged, but I was following the court.

Commissioner Thompson: Let's be gentle and say charge, because it amounts to the same thing.

Q. I want the same term in the record that the courts use.

Mr. Coates: The utility is compelled to furnish the service, but no user is compelled to take the service.

Commissioner Thompson: The utilities have exacted from them the burden of rendering service.

Q. If that expression is too harsh, I just wanted to track the court in that. Will you read that question?

[fols. 367-371] (Reporter reads question.)

Q. I will put it, at what the service rendered is reasonably worth.

A. It should be no more than the service is reasonably worth.

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[fol. 372] Questions by Mr. Stanberry:

Q. I believe you testified, Mr. Biddison, that you had examined this Exhibit No. 1?

A. Yes.

Q. And that you think it is reasonably correct, and if anything, low?

[fol. 373] A. Yes.

Q. Now then, on this question of going concern value, I believe you testified, didn't you, that that represents an actual outlay of cash, and an expenditure of money for the purpose of attaching the business?

A. Normally an organization would have to put out money to develop a business, and if this plant were rebuilt and reconstructed here today, new expenditures would have to be made to attach that business.

Q. All right, who is the South Texas Gas Company's customer?

A. My understanding of the set-up is that the customer of the South Texas Gas Company is the distribution plant in this immediate vicinity here, the Texas Border Gas Company. I believe those are the corporate names.

Mr. Coates: That is one customer. There are a number of customers.

Q. That is one customer. All right, who is the customer of the gathering system?

A. The gathering system delivers into the transmission system, and under those conditions the transmission system might be considered as being the customer of the gathering system.

Q. Now, just enumerate briefly again the expense that is incident to the attaching of business such as advertising and soliciting and your demonstrators.

[fol. 374] A. That is expense of developing your organization, and training your employees.

Q. Do you pay an inexperienced employee as much as you do an experienced employee?

A. Not ordinarily, no.

Q. Those boys pay a good part of their own tuition themselves, don't they?

A. They undoubtedly pay some of it.

Q. Now then, how much money would it take or be necessary to expend by the Texas Border Gas Company to get the Texas Border Gas Company to make this contract to take the gas from the South Texas Gas Company?

A. I don't know.

Q. What was the expense of attaching that business?

A. I do not know.

Q. The expense of attaching the business was in town?

A. That is where the bulk of it would be, I believe.

Q. On South Texas Gas Company you have a going concern value of $155,082.00, or $155,000.00 in round numbers on page 1 of Exhibit 1.

Mr. Coates: That is the combined total of the three properties, Mr. Stanberry.

Q. I was mistaken about that. The total is $155,000.00, and the transmission system is $70,659.00, going concern value. Now, what is represented in that item—where is [fol. 375] the expense that was incident to attaching that business?

A. I do not know anything about the historical expense of attaching that business.

Q. Doesn't your going concern value on any property usually run around 12 to 12 and one-half per cent, regardless of the conditions under which the business was attached; it usually runs about 12 and one-half per cent, doesn't it, in any estimate you make?

A. I think there is some appreciable variation in that figure.

Q. Well, we have the cost of attaching business here in town, in this going concern value, and then we have the cost of attaching business out at the city gate to the pipe line company, and then we have the cost of attaching the business out in the field where the gathering system comes into the main line, and you have three elements of attaching the business, where all of the cost of attaching the business is here in town. Now, how do you explain that the cost of attaching business on a transmission line, or the going concern value, is as high as it is in the city?

A. We have in this set-up shown in Exhibit No. 1, by Mr. Greene, a ulified system of gathering system property, transmission property and distribution property, with the business attached to all of them, and the going concern value

inheres in the entire property, as well as the individual [fols. 376-580] units of the property.

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[fols. 581-592] Testimony of J. V. STRANGE

* * * * * * *

Q. What was the purpose of the company in making the application for the changed rate?

A. We made that application after a study, a thorough study of the situation, which indicates to us that we are entitled to an increase in rates.

* * * * * * *

[fol. 593] Q. It is just like this item of going value generally, isn't it; it is just a pure guess, isn't it, Mr. Strange?

A. As to what going value would be?

Q. As to the percentage you would make for the cost of attaching business, what that would be; you have no idea of what that would be?

A. I would not care to attempt to express it in terms of percentage.

Q. It is a pure estimate, isn't it?

A. But I do know from actual experience that it is a very real thing.

Q. And a substantial part of the going value?

A. It is a considerable part.

Q. Now, in that connection you would not have much expense in attaching business, for instance, of the South Texas Gas Company, would you?

A. South Texas Gas Company in this hearing is considered as a part of one system.

Q. I appreciate that and understand it thoroughly, but for the purpose of trying to arrive at some idea of the going value, let's talk about the South Texas Gas Company a little bit. There is not much expense connected with the attaching of that business, is there?

A. The South Texas Gas Company in this hearing is the transmission system that leads to the distribution system.

[fol. 594] Q. I understand that thoroughly.

A. It is a part of a whole that is presented in this case.

Q. I understand that.

A. But I think your question is a bit misleading if I may say so, Mr. Bobbitt, because it is like taking a pipe line that leads down to the area where the business is located, and taking out a part of the whole.

Q. Well, just to clarify the matter, we do not want to be technical about it. Let's just consider here that you are asking, as I understand, about $50,000 or $60,000 independent element or factor of going value for the South Texas Gas Company; is that correct?

A. I do not remember what the figure is.

Q. Well, it is $50,000 or $60,000, that is the allowance you want here, and you want the rate payers to pay on that, and a substantial part of that $60,000 in value is incurred, or the expense of it is incurred by your concern in attaching business for the South Texas Gas Company. Now, just what has your actual expense, or out-of-pocket money been in attaching the South Texas Gas Company's business?

A. I would say that most of the outlay for developing the business would be on the part of the customers, the distribution systems which are supplied from the South [fol. 595] Texas Gas Company lines rather than on the South Texas line itself, but the South Texas, in this situation, simply being a part of the whole, it is my judgment that the over-all allowance for going concern value in connection with this total property presented here is reasonable, and that——

Q. I did not ask you that.

A. And that it would have been incurred in developing the business.

Q. That is very interesting, Mr. Strange; that is very interesting, but I would like to have the question answered if it is an intelligent question, along the lines I asked it.

Mr. Coates: I believe the witness has answered it.

Q. I do not think he did, Mr. Coates. To be specific about the matter, now you asked $73,000 in this set-up going value for the South Texas Gas Company?

A. Yes.

Q. That is what the record shows. Now, a very substantial part of the expense that you set up here, or contend

for, on that $73,000 item, is your out-of-pocket money, as I understood you to say, or your cost of attaching that business. Now, what did it cost you to attach the South Texas Gas Company business?

A. I have not said, or I do not say that a very substan-
[fol. 596] tial amount of the going value runs with reference to the South Texas Gas Company along that line or would be for attaching business directly to that line. On the other hand I will say that the going value asked for of the South Texas can be justified entirely on this theory, namely, that had the main transmission line of South Texas originally been built only sufficient to supply the service that was available here in Laredo at, we will say, the end of the first year of its development, and then as the property developed steps had to be taken to enlarge that transmission system, the net result of that to the rate payers would have been a much greater outlay than is represented in the reproduction cost as presented here with the full allowance for going value.

Q. That is your opinion and judgment about the matter, and very interesting, but would you be good enough to tell us if you have any idea of the cost or expense to the South Texas Gas Company of attaching its business, a substantial element in this going value item you set up here.

A. I cannot give you any estimate.

Q. Now, as a matter of fact, you know it did not cost you anything to speak of?

A. No, I do not know that, on the contrary I know that it cost money.

[fol. 597] Q. To attach the South Texas Gas Company's business; how much money?

A. I cannot tell you.

Q. You haven't any idea, have you?

A. I would not attempt to estimate that.

Q. You would not attempt to estimate it? You do not know whether it is one dollar or $25,000?

A. I would not attempt to estimate it.

Q. But you do estimate and put in this set up here $73,000 going concern value, a substantial portion of which is made up of the cost of attaching South Texas Gas Company's business?

A. A part of which is made up of the cost of attaching business to the consolidated system.

Q. Now, the cost of attaching the business, Mr. Strange, under the theory you are talking about of the Texas Border Gas Company, is substantially greater than that of the South Texas Gas Company?

A. I presume it would be.

Q. You are an experienced man, and have operated these properties, and various others, don't you know that is a fact?

A. Yes, I believe that is true.

Q. How much greater?

A. I would not attempt to say.

[fols. 598-602] Q. Can you give us any estimate of it?

A. I would not make any estimate.

Q. It is substantially greater, isn't it?

A. It would be somewhat greater.

Q. Then why do you ask for a larger allowance for going concern value for the South Texas Gas Company, or percentage, than you do for the Texas Border Gas Company?

A. I think we have asked for the same allowance in percentage.

Q. You asked 6 per cent on the South Texas Gas Company, and 5 per cent on the Texas Border Gas Company.

Mr. Stanberry: That was the depreciation, wasn't it?

Q. I am in error about that. I believe the record shows, Mr. Strange, that you asked for an allowance of about $80,000 going value for the Texas Border Gas Company, and $73,000 for the South Texas Gas Company. Practically all of the expense of attaching business that you have been talking about is incurred by the Texas Border Gas Company, isn't it?

A. I think most of it would be incurred by the Texas Border Gas Company.

Q. And the item of attaching business is a very substantial item in that factor?

A. It is part of it.

* * * * * * *

[fol. 603] Q. Mr. Strange, in connection with the application you filed, that you just testified about awhile ago, for an increase in rates to $1.50 minimum, the city replied to that request, that application or request made by your concern, didn't it?

[fol. 604] A. I do not recall that, Mr. Bobbitt.

Q. I will ask you, Mr. Strange, if you have seen the original letter of which this is a copy; it is addressed to the district manager of course?

A. I believe I have seen that letter.

Q. And you have considered that letter, have you not?

A. I think that letter was replied to, wasn't it?

Q. It may have been, yes. I will state to counsel this is a carbon copy of the letter, and I want to offer this letter in evidence, if the Commission please, which is addressed to the Texas Border Gas Company, Laredo, Texas, July 6, 1932, attention of Mr. W. W. Steinn, District Manager, and this letter says "Gentlemen: Receipt on June 29th, of petition of the Texas Border Gas Company dated June 27, 1932, addressed to the Mayor and City Council of the City of Laredo, is respectfully acknowledged. In order that the city of Laredo may be enabled to give the above mentioned petition proper consideration, as contemplated by our statutes, it will be necessary that the governing body of the city be furnished with the facts and figures upon which the Texas Border Gas Company's application for an increase in domestic rates is based. Upon presentation of such data to us by the Gas Company, we shall give the matter our careful consideration and then advise you as to our decision in connection therewith. Very truly yours, Albert Martin, Mayor, City of Laredo."

[fol. 605] Mr. Coates: In order to get the record straight and connect the record up on that have you a copy of the reply made to that letter?

Mr. Bobbitt: I think so.

Mr. Coates: Do you mind introducing it at the same time?

Mr. Bobbitt: There are some portions of that letter that we do not want to be bound by.

Mr. Coates: If it is not interrupting you, but in order to make the record consecutive, may we offer the copy of the letter so you will not be bound by it at this time?

Mr. Bobbitt: You can do that, or on cross examination as you desire. Now, you considered that request or suggestion made by the city that you present facts and figures in order that they might give consideration to your request?

A. I believe we did.

Mr. Bobbitt: And your company declined to submit any facts or figures in response to that request; isn't that true?

Mr. Coates: Doesn't our reply show just what we did much better than the recollection of this witness, and we have offered to put it in evidence as to what we did do, and what we did reply without your being bound by it in [fol. 606] any way, and I believe it is the best evidence, since it is an exchange of correspondence, rather than this witness' recollection.

Mr. Bobbitt: I am simply asking as to whether or not the company refused to comply with the request made by the city.

Mr. Coates: And we are making the objection that the letter is the best evidence of what the company did.

Mr. Stanberry: Of course I do not know what is in the letter.

Mr. Coates: I think you got a copy of it, Mr. Stanberry.

Mr. Stanberry: It is probably in the record or in the file, but I do not remember it. It might be that they did not put it in the letter at all, that they would refuse to furnish information, but still did refuse to furnish it.

Mr. Bobbitt: I am only asking for the facts, as to what took place, and it would not help the record to clutter it up as to reasons. I am only asking what they did.

Mr. Coates: The letter does state what we did, and is the best evidence of what we did; we offer in evidence the copy of the letter if Mr. Bobbitt will furnish us that copy, as to [fol. 607] what the reply was.

A. If I may have the letter I will be glad to read it in reply to your question, Mr. Bobbitt.

Mr. Bobbitt: I am asking you, Mr. Strange.

Mr. Stanberry: Just note the objection and go ahead and answer the question.

Mr. Coates: We want to object to this and all other questioning along that line as not being the best evidence, and ask that our exception be noted to each and all of these questions and answers without the necessity of making the objection to each of them.

Mr. Bobbitt: Do you wish to put the letter in?

Mr. Coates: Yes.

Mr. Bobbitt: And without binding the city?

Mr. Coates: Yes, we will offer it as Exhibit No. 7, without binding the city of Laredo by it, and I noted that this came from the city of Laredo, and you may not have gotten a copy of it, Mr. Stanberry.

Mr. Stanberry: We will receive the letter from the city to the Texas Border Gas Company as Exhibit No. 6 and the letter from the gas company to the city of Laredo as Exhibit No. 7. Proceed with the witness.

By Mr. Bobbitt:

Q. As I say, Mr. Strange, you declined to give the city any information or any facts and figures in line with its request made to you to submit facts and figures upon which it might [fol. 608] give consideration to your request or petition for an increase in rate.

Mr. Coates: Before answering the question refresh your memory from that letter as to what we did.

A. It is my recollection that we did give facts and figures to the city in response to its request.

Q. Isn't it true that you made the statement you did not think it would serve any useful purpose to give any facts and figures at that time?

A. Reading from the letter, this paragraph will, I believe, answer you.

Mr. Coates: You might read the whole letter, Mr. Strange, to connect it up.

A. All right, I will read this letter. "United Gas System, Laredo, Texas, July 12, 1932. To the Honorable Mayor and City Council of the City of Laredo, Laredo, Texas. Gentlemen: This will acknowledge receipt of Mayor Martin's letter of the sixth instant. Your Honorable Body now has before it three gas rate schedules, namely, a schedule of reduced rates contained in the rate reduction ordinance from which an appeal to the Railroad Commission has been taken, the existing gas rates in Laredo, and the rate schedule proposed by the company in its recent application. Since this entire matter is now before the Commission, we believe [fol. 609] that the Commission should fix fair and reasonable rates for Laredo in keeping with the testimony which is presented when the matter is heard, without regard to whether the rates so fixed are greater or less than those which have previously existed. The possible construction of the statute which requires the filing of an application for increased rates with a city which has already enacted a rate reduction ordinance, necessarily places the governing body of that city in the position of defending a schedule of

reduced rates before the Commission at Austin, and at the same time sitting in judgment upon an application for increased rates at home. We enclose a statement showing operating expenses of South Texas Gas Company and Texas Border Gas Company incurred solely in gathering, transmitting and distributing gas to the city of Laredo and the gross revenues from gas sales to Laredo consumers, such operating statement covering the twelve (12) months' period ended March 31, 1932. While we neither agree with nor accept Mr. Neff's figures, we call your attention to the fact that Mr. Neff has already fixed the value of the properties of South Texas Gas Company and Texas Border Gas Company solely used and employed to serve Laredo consumers at $718,072.26, and has found that $35,752.51 per year is a proper reserve for depreciation. We assume that you will wish to have this operating statement checked by your city [fol. 610] representatives and the books of the company will be open to you for this purpose. The checking of this operating statement will permit you, on figures wholly found by city representatives, to determine whether existing rates are more or less than adequate.

"Until you have determined the inadequacy of the existing rates, as the figures which you have at hand, and which we are now furnishing you enable you to do, we think that you will agree with us that no useful purpose can be served by presenting facts and figures to show how much existing rates should be increased in order to yield a reasonable return.

"We will be glad to know the conclusion you reach with respect to the adequacy of existing rates at Laredo and will be prepared to act promptly in accordance therewith.

"Very respectfully yours, Texas Border Gas Company, by signed). W. W. Stein, District Mgr."

Q. That application was made and those letters written following the filing of that application, and you had already appealed from the action of the city of Laredo?

A. I believe we had.

Q. And that matter was then pending on the appeal which you had perfected?

A. Yes, I believe so.

[fol. 611] Q. And the duty of the Commission was to fix fair rates on that appeal?

A. Yes.

Q. Why did you file that application at that particular time within the city of Laredo, when the entire matter was pending before the Commission?

A. I think our purpose in filing the petition for an increase of rates was so this hearing might determine whether the rate adopted by the city in its ordinance or the rate we had petitioned for, which of those two rates was the fair and equitable rate.

Q. And that is the sole and only reason you filed the application at that time?

A. Yes.

Q. You did file the application and request for increased rates, and the city official courteously asked you for facts and figures upon which to consider your petition, and you refused to give them those figures?

A. I do not believe the letter is quite capable of that construction.

Q. You did not give them any facts and figures?

A. Yes, we gave them operating revenues and expenses.

Q. You gave them a little slip of paper with some figures on the back of it, and they could not base any intelligent rate on it, so far as rate making purposes was concerned? [fols. 612-1013] A. They would perhaps need more information, but I believe we indicated a willingness to give them all the information they wanted.

Q. You could have given them full information in compliance with our request?

A. I think the letter rather courteously states why we did not give more information.

Q. You could have given the information they requested?

A. Yes, we could.

Q. And you did not, that is what I am interested in, in getting the record straight. That is all for the present.

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[fols. 1014-1016] [File endorsements omitted]

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[fols. 1017-1018] BEFORE THE RAILROAD COMMISSION OF TEXAS, GAS UTILITIES DIVISION

Hearing Held in the City of Laredo, Texas, November 14, 1932, 10:00 o'clock A. M.

Before Honorable E. O. Thompson, Commissioner

Gas Utilities Dockets Nos. 49 & 63

In the Matter of the Appeal of THE TEXAS BORDER GAS COMPANY AND THE SOUTH TEXAS GAS COMPANY from an Order of the City of Laredo Fixing Rates and Charges for Natural Gas and Natural Gas Service

* * * * * * *

[fol. 1019] Whereupon the witness HENRY E. ELROD, being by the Commission first duly sworn, testified as follows:

Direct examination.

By Mr. Lange:

Q. Please state your name, age and place of residence.
A. Henry E. Elrod, 54 years old.
Q. You reside where?
A. I reside in Houston, Texas.
Q. Mr. Elrod, what is your occupation at this time?
A. I am a consulting engineer.
Q. For the purpose of this record will you please briefly [fol. 1020] give the pertinent details in connection with your vocation, your work that you have done in connection with your engineering work, and the degrees, if any, that you hold.
A. To start back with my early experience, in 1892 to 1898 I worked successively as roustabout foreman, dynamo tender, lineman and foreman for Electric Light and Water Plants at Columbus, Texas. 1898 to 1901 while I was attending the Agricultural & Mechanical College of Texas I was night operator of the Electric Light Water & Ice Plant. I graduated in 1901 with the degree of Bachelor of Science and Mechanical Engineer. In 1901 to 1903 I was structural engineer for Mosher Manufacturing Company of Dallas. 1903 to 1906 I was successively structural engineer and gen-

eral manager of Bartlett Steel Company of Joplin, Missouri. These two companies specialized in the manufacture of structural iron works for buildings and bridges, and the fabrication of structural steel for the same purposes, and the design and construction of general iron and machinery works.

1906 to 1910 I designed and supervised the construction of and operated as general manager the plant of the Houston Structural Steel Company. That concern also was a manufacturer of structural iron works, and a fabricator of structural steel works for buildings and bridges and all kind of work requiring the fabricated iron and steel.

1910 to 1912 I was general manager of the Union Iron [fol. 1021] Works of Houston. They were manufacturers of oil well supplies and equipment, drilling rigs, drilling tools and all kinds of iron works that went with oil and gas development and the supplies which they handled in connection therewith.

From 1912 up to date I have been in the practice of my profession as a consulting engineer. During that time I have constructed, designed and supervised the construction of 30 water works systems; 13 dams for water supplies; 11 reservoirs for impounding water; 13 water filtration plants; 9 deep wells; 10 water supply reports; 25 sewer systems; 47 sewage treatment plants; 34 municipal paving programs; 4 county highway systems; the appraisal of 34 public utilities; 17 geologic reports; 84 technical reports of various characters, totalling 324 engineering Commissions.

Now, of the details of the work on the water works systems for various towns in Texas and California, for the sewer systems, I roughly estimate that I have supervised the construction, not all personally, of course, but generally under my supervision, of approximately 3 million lineal feet of trenching and backfilling, or over 500 miles.

The dams that I have built consist of earth works, concrete works, masonry, steel and so forth. The public utility appraisals, at Alba, Texas, the water works system for purchase. At Amarillo, Texas, the Water, Light & Power Com- [fol. 1022] pany for rate purposes; that was a Federal Court case, that is, the case found its way into the Federal Court, and I testified in that case. The appraisal of the Brunner Texas Water Works System for purchase. At Coleman, Texas, the sewer system for purchase. At Galveston, Texas,

the Galveston Electric and Street Railway properties for rate purposes.

Q. Was that a Federal rate case?

A. Yes, and it finally went to the Supreme Court.

Q. Of the United States?

A. Yes, of the United States. The Brush Electric Company for light and power rate purposes.

Q. Was that a case which also went to the Supreme Court of the United States?

A. Yes. The Galveston Gas Company, which was an artificial gas company, for rate purposes. The Galveston Wharf Company for taxation purposes. The Gorman Water Works System for purchase. Honey Grove Water Works System for purchase. The Houston Gas & Fuel Company for rate purposes. The Southwestern Telephone and Telegraph Company, two of them, for rate purposes, and one of those went to the Supreme Court. The Home Telephone Company, automatic, at Houston, for rate purposes. The Houston Lighting & Power Company for rate purposes. The Houston Electric Company and Street Railway for rate purposes. The Hubbard Texas Water Works System for [fol. 1023] purchase. At Jacksonville, Florida, investigation of properties and operation of the Jacksonville Municipal Electric Light & Power Company for the City of Houston for purposes of comparison. At Lockhart, Texas, the water works system for purchase. At Longview, Texas, the Longview Light & Ice Company for rate purposes. At Malone, Texas, the water works system for purchase. Merkel, Texas, the Electric Light & Power Company for rate purposes. At Paducah, Texas, Electric Company for rate purposes. At Port Arthur, Texas, the gas works for purchase. At Ranger, Texas, the Ranger Water Company for purchase. At San Angelo, Texas, the Electric Light & Water Works property for purchase. At San Marcos, Texas, the San Marcos Utility Company for rate purposes, that was a water plant. At Taylor, Texas, the sewer system for purchase. At Temple, Texas, the Temple Gas Light Company for rate purposes. At Tyler, Texas, the sewer system for purchase and the water works system for purchase. At Wichita Falls, Texas, the Wichita Falls Gas Company, I believe that is a municipal gas company.

Q. That case was heard before the Railroad Commission of Texas?

A. Yes, in 1923.

Q. And you testified in that case as an engineer?

A. Yes, for the City. At Dallas, Texas, the Dallas Telephone Company for rate purposes. As nearly as I can esti- [fol. 1024] mate offhand from memory, the total values involved approximate $100,000,000 of property appraised.

Q. Mr. Elrod, in your work as an engineer, has that work been on behalf of municipalities or cities in either rate, purchase or other matters?

A. It has.

Q. In connection with the appraisals that you have made, and experience you have had in making those, what has been your—has there been any particular difficulty that you have encountered because of the fact that the appraisal was being made in behalf of the municipalities as distinguished from that which were made by the utilities?

A. Well, I believe it is patent that a consulting engineer is not a purchaser of materials or supplies, and he has to get his prices in the form of quotations from material supply companies, and he becomes familiar with prices through the unit prices used by the contractors that bid on the work, but in a rate case he must depend entirely upon getting quotations from manufacturers and material supply people. Since, as I have said, a consulting engineer is not a purchaser of these materials, and the utilities are purchasers of such materials, the material supply people and manufacturers generally are rather cagey about giving a consulting engineer the prices that they would give to the purchasers to be used against their customers in rate hearings. [fol. 1025] I know that we have been unable to get preferential discounts as to various items, and I know from experience in connection with my work that such preferential discounts are given. For instance, I asked for a quotation on pipe F. O. B. Laredo, and I was given a quotation on pipe at its market price, the price which would be quoted to anybody who asked for a price. I was not told by the company quoting that if I had included a keg of nails in each car of pipe that I could have gotten a lower rate on freight as a technical mixed car instead of a straight car. I know that that is done, and as I say, I know that preferential discounts are given, and so it is obvious that a consulting engineer cannot get the very lowest quotations, and the quotations that a company actually buying materials in large quantities can and does get.

Q. That is a consulting engineer asking for those quotations on behalf of a municipality who is not a purchaser?

A. Yes.

Q. Mr. Elrod, were you engaged by the City of Laredo to prepare an inventory and appraisal of the properties of the Texas Border Gas Company and South Texas Gas Company used and useful in serving the rate payers of the City of Laredo?

A. Yes.

Q. I will ask you whether or not you have prepared, to-
[fols. 1026-1027] gether with Mr. J. D. Shaw, an inventory and appraisal of the properties of South Texas Gas Company and Texas Border Gas Company used and useful in serving the City of Laredo?

A. I have.

* * * * * * *

[fol. 1028] Mr. Lange: Will the reporter please identify
[fol. 1029] this exhibit.

Commissioner Thompson: It will be received as Exhibit "A".

By Mr. Lange:

Q. Mr. Elrod, you have before you a copy of Exhibit "A", styled Inventory and Appraisal of the properties of South Texas Gas Company and Texas Border Gas Company.

A. I have.

Q. If you will turn to Page 1 at the bottom of the page, Texas Border Gas Company and South Texas Gas Company, July 31, 1932, allocation as to net appraisal after deducting from said appraisal the sum of $65,257 being disallowed for lines to Mirando City and Oilton and gathering system in the Jennings Field and Jim Hogg Junction with concomitant structures. Total appraised value, $565,055. You have allocated to Laredo the sum of $544,921?

A. Yes.

Q. That represents a percentage of 96.45?

A. Yes.

Q. South Texas Gas Company's properties, total appraised value, $629,982, allocated to Laredo, $449,114, and that represents a per cent of 71.29 per cent?

A. Yes.

Q. Now, will you explain how you arrived at the total figures at the bottom.

[fol. 1030] A. The figure of $629,982 is the amount of the company's appraisal for the South Texas Gas Company's properties less the $65,257. The amount of $449,114 is the amount of the figure just read allocated on the basis of 71.29 per cent, which is the per cent of allocation used by the company. The total appraised value of the two properties is then $1,194,987.

Q. That is the company's appraisal?

A. The company's appraisal and the amount allocated to Laredo is $994,035.

Q. As per the company's appraisal?

A. Yes, less, of course, the $65,257 which was omitted.

Q. How did you arrive at that per cent of 83.18?

A. The ratio of the allocated property to the total appraised property is 83.18 per cent, which is the per cent which we have used in allocating the properties to inside of the City of Laredo.

Mr. Coates: Mr. Lange, I do not like to interrupt any more than I could help, but I did not understand Mr. Elrod, whether the figure $65,257, being the lines to Mirando City and Oilton, and the gathering systems at Jennings Field to Jim Hogg Junction was the appraised value given to those properties by the company.

A. Yes.

Mr. Coates: And has been deducted from the remaining [fol. 1031] value of the appraised property as appraised by you?

A. No, the figure $449,114 is 71.29 per cent of the figure $629,982.

Mr. Coates: Well, have you deducted the figure of $65,257 from any other figure—have you made that subtraction?

A. I do not quite get your question.

Mr. Coates: Have you gone through the mathematical calculation of deducting the figure of $65,257 from any appraised value figures appraised by you?

A. No sir.

Mr. Coates: You have not?

A. No.

Mr. Coates: I still do not understand it, but I guess I can bring that out on cross examination.

A. Maybe I can explain it a little clearer. We took the company's appraisal which shows the total appraised value of the Texas Border Gas Company's properties at $565,055. Now, that figure 5 in there is a stenographic error which I have just noticed. It should be $565,005.

Q. Now, is that all the properties of the Texas Border Gas Company?

A. That is just those properties included in the company's appraisal, and if you will turn to Page 2, I believe, of your appraisal, you will see that figure as representing [fols. 1032-1049] the total unallocated properties of Texas Border Gas Company and the figure of $544,921 will represent that portion of the company's properties which the company allocated to Laredo.

* * * * * * *

[fol. 1050] Commissioner Thompson: How do you arrive in your prices, or arrive at this 88 per cent? Just what do you do?

[fols. 1051-1117] A. We try to ascertain the age, the length of time the property has been installed, and that in connection with the condition, we use our best judgment at putting a per cent condition on it. Now this particular station or meter house has probably been in for 12 years.

Commissioner Thompson: You just look it over and see how long it has been there, and if it has been there a long time, and been kept up in good shape, would the per cent condition be more or less than if it had not been kept up so well?

A. The per cent condition of course would be more if it has been well maintained.

Commissioner Thompson: And that would have something to do with it also?

A. Yes.

Commissioner Thompson: And did you consider that?

A. Oh, yes.

* * * * * * *

[fol. 1118] Q. Now, turning back to page 2 of the exhibit, general summary and allocation, what does that page reflect?

A. That page reflects a general summary of what the appraisal carries. For instance, the first item is a summary

of the gathering system, the cost new, and the present value; that is, the cost new less depreciation, in columns 1 and 2, respectively. The next item is transmission system, showing the cost new, and the cost new less depreciation, respectively, as shown by the appraisal. The third item is distribution system cost new and cost new less depreciation, and the total, less land, leases and rights-of-way. Do you want me to read the figures as I go?

Mr. Coates: They appear in here all written down.

Q. You may read those items until we get to the structural overheads.

[fol. 1119] A. The next item is less materials and supplies, which gives a total cost new, a present value as indicated by the appraisal of the purely structural elements of the appraisal. The next item is included with and incorporated in this amount as expense of purchase and storage deducted on account of being excessive, $39,320.00, and depreciated or cost new less depreciation is $29,687.00.

Q. This item of $39,320.00, what does that represent?

A. That represents the total of the item of purchase and storage as included in the unit prices, or set up separately against the various items of structural costs for the purchase and storage of the materials that went into the construction.

Commissioner Thomps-n: Then you depreciate that?

A. That is depreciated along with the elements that it enters into. In other words, if you have a pipe that costs $100.00, and the purchase and storage on it is $10.00, and that pipe depreciates out of existence, the purchase and storage expense depreciates out of existence along with it because it is a part of the cost of the pipe.

Commissioner Thompson: I understood this $39,000 was excessive cost; that is, things you figured should not have been that high?

A. Yes.

Commissioner Thompson: Then you depreciate that?

[fol. 1120] A. Yes; that is, those items have entered into the structural costs, and we have taken that out. If we had left them in the structural costs they would have been depreciated.

By Mr. Lange:

Q. In other words, the $29,687.00 is your depreciated item?

A. Yes, of course, both items are depreciated.

Q. And the item is deducted from the depreciated item?

A. That is correct, and the undepreciated value is deducted from the undepreciated cost new. Then, of the total cost, both allocated to Laredo, 83.18 per cent, giving a total allocation of $897,895.00, and the average condition is 75.5 per cent, giving cost new less depreciation of $667,711.

Q. That comprises the total physical property?

A. That comprises the total physical properties.

Q. Then after that you have a number of items, the first of which is——

A. Is preliminary and organization expense, which is 2 per cent.

Q. Now, in connection with these items of structural overheads, I will ask you whether you have prepared an exhibit, giving your explanation of those items?

A. Yes.

Commissioner Thompson: Do you wish to introduce it?

Mr. Lange: Yes.

[fol. 1121] Commissioner Thompson: It will be admitted as Exhibit "B".

Q. That exhibit is not very long, if the Commission please, and if you will permit I will have the witness to just read it into the record.

"In the promotion and construction of nearly every utility plant, certain costs are borne by the owner, which costs, while they have a direct bearing on, and connection with, structural costs, cannot be identified therewith in any physical form. These costs are called "Structural Overheads", generally, they are:

"(1) Preliminary & Organization Expense.

"(2) Engineering & Supervision During Construction.

"(3) Administration & Legal Expense During Construction.

"(4) Taxes During Construction.

"(5) Interest During Construction.

"Taking the above items in order—

"(1) There is no question but that there were some expenses incurred in the organization of the old Border Gas Company, and in connection with the preliminary work prior to the organization thereof. The matter of preliminary work, however, as relates to the discovery and development of a gas supply, has been eliminated by stipulation of the parties covering the price of gas to be charged at the mouth of the well. Preliminary and Organization Expense, [fol. 1122] then, is resolved into the matter of such expenses as were connected only with the organization of the Border Gas Company.

"The History of the situation is, briefly:

" 'While a well was being drilled for water on the Reiser Brothers' Ranch, East of Laredo, in 1908, gas was encountered and a gas well was successfully completed', subsequently, 'a considerable number of wells, approximately 29, were drilled in the Reiser fields'. What the cost of this development may have been, or the cost of the development of any other field involved in this case, is of no interest here for, as stated, this phase of preliminary expense has been eliminated from consideration.

"On February 18, 1909, Messrs. Reiser and Johnson, of Laredo, were granted a franchise by the City Council of Laredo to purvey gas within the City of Laredo. What, if anything, was paid for this valuable concession to use the streets and ways of the City, is nowhere disclosed, and in the absence of any proof that anything was, in fact, so paid, no allowance can be made now for same.

"Messrs. Reiser and Johnson, having two years from date of franchise to get gas into Laredo, did not undertake active operations.

"On April 2, 1910, the Border Gas Company, a Louisiana Corporation, was organized with a capital stock of $500,000. Subsequently, and before January 1, 1911, a transmission [fol. 1123] line was constructed from the Reiser field to Laredo, and the nucleus of a gas distribution system constructed within the City of Laredo. On December 23, 1910, the first gas fire was lighted in a home in the City.

"On January 1, 1911, the Border Gas Company took over the assets and assumed the liabilities of the Trustee for the properties, Mr. M. P. Cullinan.

"With a developed gas supply 22 miles from the City of Laredo and a franchise to serve gas to the City of Laredo, it is not difficult to visualize the ease with which organization was affected, and in view of the comparatively short interim between the date of the franchise and the time when the properties were completed and in operation, to realize the comparatively small cost of promotion expense and costs of organization.

"Courts and commissions have rather generally allowed as much as 3% of the direct structural cost for preliminary and organization expense. In view of the stipulation referred to, and of the history as related, an allowance of 2% of such costs is believed to be adequate and fair—

"Total Structural Cost	$897,895
"Allowance, at 2%	17,958."

Q. Now, that is the first item that you have under Preliminary and Organization on page 2 of Exhibit 1?
[fol. 1124] A. Yes.

"(2) Engineering is recognized as a real and necessary charge when properly applied in view of the history of the Companies' properties.

Beginning with January 1, 1911, when the said properties became an operating entity, the book value of same was $166,996.

"It is reasonable to assume that, prior to January 1, 1911, the construction of the whole of the said properties was accomplished under the direction of an engineer. Subsequent to January 1, 1911, with the exception of two independent engineering reports (one in 1912, which had to do with the gas supply, and the other in 1928, which was a valuation and gas supply report) and up to April 10, 1928, it is believed that all engineering services performed in connection with new construction (extensions) was done by the engineering staff of the Border Gas Company, and charged to Operations, in which event, the cost of such services was taken care of, currently, by the contributions of the rate payers. Such records of the Border Gas Company as have been available fail to disclose that charges for engineering services were made to Capital Account.

"The book cost of the properties of the Company, as of

"July 31, 1932	$1,183,052
"Book Cost—April 10, 1928	1,006,512
"Difference, for Engineering Fee	176,540
-Book Cost—January 1, 1911	166,996
[fol. 1125] "Total cost on which engineering and supervision is chargeable	$343,536

of 29% of Total Book Cost.

"Since 5% of the total direct structural costs is the usual fee for engineering and supervision, and as that portion of the properties on which a fee is chargeable is 29% of the total properties, the allowance for this item should be 29% of 5% or 1.45% of the total direct structural costs. In view of all of the above, it is thought that a liberal estimate for Engineering and Supervision is 2.5%—

"Total Structural Costs (Depreciated)	677,711
"Engineering & Supervision 2.5%	16,943."

Q. That is the second item reflected on page 2 of Exhibit 1, under Structural Overheads?

A. Yes. "In view of the history of the construction of the properties under consideration as related under previous headings, it is believed that 1.5% of the total direct structural costs of the properties is an adequate allowance for Administration and Legal Expense During Construction.—

"Total Structural Costs (Depreciated)	677,711
"Administration and Legal 1.5%	10,166."

Q. That is the third item under Structural Overheads on page 2 of Exhibit 1?

A. Yes, it is. "It has been shown that the original property of the Border Gas Company was constructed between [fol. 1126] April 10, 1910, and December 23, 1910. City and County Records do not disclose that any taxes were paid by the Company during the years 1910 and 1911, which was the construction period."

However, on January 31, 1913, the company did pay County Taxes of $8.13 on a value of $800.00 for 20 miles of line; that was in the County. For 1911, or for the year

1911, that was after the original construction period, and in the City the company rendered for 1911, and paid on April 30, 1912, $400.29 on a total valuation of $25,825.00.

Q. In connection with that, if the Commission please, we have the certified copies, and we will introduce certified copies from the Tax Collector's office.

Commissioner Thompson: All right, that will be all right. What he is reading is not in my copy here. You are testifying about the taxes the company paid?

A. Yes.

Mr. Coates: In 1911.

Commissioner Thompson: I do not quite see what that has to do with the reproduction cost new.

A. Well, the company sets up an amount for taxes during construction.

Commissioner Thompson: That is in the reconstruction of a new plant. What would be considered—I think you can generally assume that taxes are going to have to be paid. In this case they did not pay them, that is what you bring [fol. 1127] out?

A. It has never been my idea of a reproduction theory that you are entitled to have any expense considered which has not been actually paid. You cannot reproduce anything which has not previously been produced.

Q. For the stenographer's identification we will introduce this.

"The balance of the properties were constructed 'piece meal' and no single element of construction required as much as one year to complete. It is believed that no taxes, whatever, were paid on any items of construction in progress, hence no allowance for Taxes During Construction should be made. In the event, however, that any taxes were paid which were not charged to operations, an arbitrary allowance of 0.5% is being made for this item—

"Total Structural Costs	897,895
"Taxes During Construction 0.5%	4,489."

Q. That item is the fourth item under Structural Overheads on page 2 of Exhibit 1?

A. Yes. "It is recognized that, regardless of how money is obtained, it has an earning value, and that money tied up during construction, is entitled to earn a fair return. Such

a fair return is taken at 7% per annum." By fair return I do not mean the fair return in the sense of a fair return on operating property, but the interest rate that money would [fol. 1128] bear.

Q. There is a difference in the fair return on money borrowed, and the fair return on an investment?

A. Yes. "Although neither the original construction in 1910, nor any additions made to the Companies' properties since, has required as much time as one year to complete, for the purposes of this case, the period of construction is taken, arbitrarily, at one year; hence the average time which the Companies were held out of their funds during construction was 6 months—

"Total Construction costs (Depreciated)	677,711
"Interest During Construction 3.5%	23,720."

Q. That item is the fifth item under Structural Overheads on page 2 of Exhibit 1?

A. Yes.

Questions by Mr. Coates:

Q. Now, let me ask one or two questions. According to the way I see it, Exhibit "B" is the calculation of the general structural costs, or what are sometimes called general and undistributed overhead costs, contained in Exhibit "A"?

A. Yes.

Q. And Exhibit "A" insofar as direct structural costs is concerned is a reproduction cost new appraisal as of July [fols. 1129-1130] 31, 1932, is it not?

A. Yes.

. . . . . .

[fols. 1131] By Mr. Lange:

Q. Turning back to page 2 of Exhibit 1, Mr. Elrod, the next item after the five structural overheads represents what item; additional allowance for purchase and storage; what is that?

A. This is the allowance of $10,000 that, depreciated along with the structural elements, would be $7,550.00.

Q. The next item, what percentage does that represent?

A. Well, above we have allocated all of the structural ele-

ments except land and materials and supplies on the basis of 83.18 per cent. We are now adding back lands and rights-of-way and materials and supplies, and adding them back on the allocated basis. The 83.18 per cent of the lands and rights-of-way is $12,313, which do not depreciate, and the cost new less depreciation is the same figure $12,313. [fol. 1132] Materials and supplies allocated on the same basis, or $18,770, and since they do not depreciate either, their cost new less depreciation is $18,770.

Q. You have added the item of working cash; how do you arrive at that?

A. The working cash is calculated on the basis of two months operating expenses less the gas purchases. It amounts to $11,157.

Commissioner Thompson: You say you allowed two months working capital or working cash, I believe, you call it, on what theory did you take it that two months was sufficient?

A. Generally 45 days is the amount, or one-eighth of the years operating expenses on the basis that the company collects its accounts, and has the cash with which to pay its bills, and to operate on.

Commissioner Thompson: The money to be paid in 15 days after the first, is that it?

A. Yes, however, with the continuous meter reading system the company does not get all its money in by the time its bills are due, and so I have arbitrarily extended that to two months instead of the usual 45 days.

Commissioner Thompson: Thank you.

Q. That gives you a total rate base of $800,782?

A. Yes.

[fol. 1133] Q. As shown on page 2 of Exhibit 1.

A. Yes.

Q. Your appraisal does not disclose any allowance for going concern value?

A. No sir.

Q. Have you mad a study of that item?

A. Yes, I have.

Commissioner Thompson: The tax statement will be received as Exhibit "C".

Q. We introduce this statement of the witness as Exhibit "D".

Commissioner Thompson: It will be received as Exhibit "D".

Commissioner Thompson: I believe you said, Mr. Elrod, that in considering cost of reproduction new that it would be wrong to consider taxes, if not for taxes which were paid in the figure that would be contemplated?

A. Yes.

Commissioner Thompson: And if actually it was not paid, then it would not be right to figure it?

A. Yes. I do not believe it would be right to include anything that had not originally been produced.

Commissioner Thompson: Reproduction new would necessarily include those things only which were originally produced or paid?

[fol. 1134] A. Yes.

Mr. Lange: And the very word of reproduction would contemplate that, if the Commission please. You cannot reproduce anything which has not been produced.

Commissioner Thompson: I was just thinking about it.

A. I think the courts and commissions have rather generally recognized that fact.

Mr. Coates: Now, we object to what the courts and commissions have held. This man is not a lawyer.

Commissioner Thompson: Yes, it will be stri-ken from the record. I was just asking for an engineering opinion. You say there is no going value to this outfit?

A. I have found none.

By Mr. Lange:

Q. Mr. Elrod, in connection with this exhibit I will ask you as an engineer what is your conception of going concern value in a rate case?

A. It is that value that represents the cost——

Q. If you wish you might read this, if you have it in your exhibit.

A. "Going value is that value which represents the sacrifices, in addition to direct structural costs, and having no connection therewith, which the owner of a utility may make to carry the operations of the utility to a time when a fair return on the value of the properties devoted to public use [fol. 1135] is earned.

"Such sacrifices may be termed 'Development Costs', and generally, include such items as:

"Drafting and training an operating personnel.

"Coordination of operating elements, both mechanical and human.

"Preparation of systems of accounts and records.

"Solicitation of business by personal effort, advertising and demonstrating.

"Any and every sacrifice, or cost, of whatever nature not a part of structural costs, which may be necessary to produce a remunerative business."

Mr. Coates: Are you an accountant?

A. No, sir.

Mr. Coates: Your next statement in Exhibit "D", it occurs to me, refers to accounting procedure, and we object to it, because the witness is not an accountant.

Mr. Lange: If the Commission please, I asked the witness to testify with reference to this item as an engineer in the light of his experience. He has given his qualifications to this Commission. He has, in connection with that, and among those qualifications, given, included the Galveston Electric Case; that was the first case that ever went to the Supreme Court of the United States wherein a definite [fol. 1136] theory was formulated as to what going value should be, and it was excluded in that case, and this witness is now testifying as to his opinion, and in the light of his experience what his opinion is of going value in a rate case.

Mr. Coates: There have been a great many cases which have gone to the Supreme Court since then.

Mr. Bobbitt: It never has been changed.

Mr. Coates: I will argue that on brief.

Commissioner Thompson: Go ahead.

A. "There are only two ways in which the element of Going Value may be handled from an accounting standpoint. One is to charge such costs directly to Capital Account; the other is to charge these costs to Operations.

"If these costs are charged to Capital Account, the books of the utility will reflect the exact amount thereof. In the event that they are charged to Operations, and there has been an insufficient revenue to cover them and leave a fair profit, then these costs will be reflected by an operating deficit. If, on the other hand, there has been sufficient revenue to cover such costs, and leave a fair profit, or return, then these costs have been taken care of through the contribution of the rate payers.

"Since going value bears no definite relation to direct structural costs and so, cannot be estimated as a percentage [fol. 1137] of such structural costs, there is only one way to arrive at the amount of Going Value, except through estimates based upon purest speculation and conjecture. This one way is to consider the financial history of the utility—its books and/or records.

"Such books of accounts and records, which have been available in the instant case, do not show any amount for Going Value; it is reasonable to assume, then, that the costs of the elements of Going Value were charged, and properly, to Operations. An audit of the books of the Border Gas Company by the City of Laredo's Auditor, indicates that from the first year of the Company's operations, it earned a fair return on the book value of its properties, and that it set up a depreciation reserve far in excess of its requirements.

"The history of the construction of the Company's properties indicates that about April, 1910, the Border Gas Company was organized and that some time later a transmission line was built from the Reiser gas field to Laredo, and a distribution system built in the City., That the actual delivery of gas to consumers in Laredo began in December of the same year.

"The history of the Company further shows that the distribution system was not built as a whole, but that it grew, block by block, as consumers were available. There is no evidence of any advertising, soliciting or demonstrating, other than by the merchandising sales department, [fol. 1138] having been done, the cost of which was not charged to operations.

"In view of the history of the Company, and where, as in this case, an old and long established utility has enjoyed a long period of successful operation, and has earned a fair return from the very start and has taken, from gross revenues, reserves for depreciation far in excess of reasonable requirements, it is obvious that there can be now no sacrifices, no Development Costs, no early losses, or deficits of fair return from operations, which have not been fully compensated for.

"Therefore, and in view of the fact that reasonably ample allowances have been made for direct constructional 'Overhead' costs, such as——

"Organization,
"Engineering and Supervision,
"Administration and Legal Expense,
"Taxes during Construction, and
"Interest during Construction,
and that the properties of the Companies have been evaluated as Going Concerns, as distinguished from similar concerns which are not 'Going', and perhaps for other reasons not included in the above but which may be presented, no separate allowance for Going Value has been made."

[fol. 1139] Cross examination.

By Mr. Coates:

Q. Mr. Elrod, refer to Exhibit "A", transmission line equipment shown on page 80 to 90 of the transmission section; on page 87 of the section, page 111 of the exhibit, you show 6 and five-eighths inch O. D. pipe, weighing 18.974 pounds, two joints, welded and Dresser coupled, painted with Epco paint, at a unit cost of $1.09 in round figures. Will you break that unit cost down, Mr. Elrod, [fol. 1140] starting in with the mill price of the pipe including the freight and going on through the material, and then give us the break down of your labor costs.

A. Did you say that was 8 inch pipe?

Q. No, it is 6 and five-eighths inch O. D., 18.974 pounds, two joints welded and Dresser coupled. It is the second item on page 87; what is the price of that pipe F. O. B. the mill, per foot, if you have it set up that way?

A. I do not have it set up that way, the pipe F. O. B. Laredo.

Q. No, I want pipe F. O. B. the mill.

A. I have not got it set up that way. I have it pipe F. O. B. Laredo, $.64520.

Q. Is that dollars per foot?

A. Yes, 64.52 cents per foot.

Q. Is that based on a quotation?

A. Yes.

Q. From whom?

A. From the Bethlehem Steel Company.

Q. Have you the original quotation with you?

A. Yes.

Q. Do you mind letting us have a copy of it?

A. I do not have it in condition to be copied.

Q. Do you mind trusting us with the original until it can be photostat-ed?

[fols. 1141-1153] A. I am perfectly willing to convince the Commission that it is authentic, but that is information that we have gotten more or less confidentially.

Commissioner Thompson: You mean quotations are confidential?

A. That is one of the difficulties that a consulting engineer has in getting prices.

Commissioner Thompson: If you write and tell them it is for a valuation purpose, they will give them to you, won't they?

A. They will not give you the prices you want, and I do not know that the prices I have are the prices that the company gets, and I am pretty confident that they are not, because I am told those were the market prices.

* * * * * * *

[fol. 1154] Testimony of J. D. Shaw

Direct examination.

By Mr. Lange:

Q. State your name, age and place of residence.

A. J. D. Shaw; I live in Houston; 51 years old.

Q. What is your present occupation, Mr. Shaw?

A. In consulting work in the last year.

Q. Have you any engineering degrees?

A. Yes, I have a statement here of my experience.

Q. Will you please let us have that; it is not very long, and we will have him read it into the record.

Commissioner Thompson: That's all right. That is the greatest joy these experts have, to give their qualifications. Let him go at it as long as he likes.

A. "I am a graduate of the University of Texas, with a B. S. Degree, and of Cornell University, with M. E. degree, and took the Student's Test Course with the General Electric Company. I was, for one year, instructor in engineering at Texas A. & M. College.

"Under the supervision of the Chief Engineer of lighting and railway interests, subsidiaries of the Philadelphia

Gas Company, I had charge of the construction and maintenance of the underground electric transmission system, and, as a part of my duties, completed the electrolysis mitigation investigation and its construction work in con-
[fol. 1155] nection with the protection of the natural gas and water mains in the cities of Pittsburg and Allegheny, Pennsylvania.

"About half of my engineering experience has been in a consulting capacity, mostly for municipalities; six years in a partnership business, also three years with Mr. H. E. Elrod, Consulting Engineer, and two years with Engineering Service Corporation, Consulting Engineers, of Houston.

"In my private work, I have held ownership in ditching machines for carrying on our construction work, and have constructed a number of water and sewer systems in Texas and Arkansas. I have had charge of numerous appraisals, for purchase, and for rate cases, including the gas distribution system at Wichita Falls, with Mr. Elrod, irrigation systems at Harlingen and San Benito for purchase by the farmers, the appraisal of a number of water works for purchase by municipalities, the appraisal of the gas plant at Waco, et cetera.

"In the public utility work, I organized and operated for some time, the general stores, shops and laboratory for the Texas Power & Light Company, and had under my direct supervision the maintenance of plant mechanical equipment over the system, including gas equipment and meters in the plants at Waco and four other Texas cities.

[fol. 1156] "While with these electrical interests in North Texas and subsequently with Stone & Webster interests in East Texas and Southwest Louisiana, I participated in, and had, in many instances, direct charge of the design, construction and maintenance of electric power plants, gas generating plants, water systems and electrical distribution and transmission systems and as Construction Superintendent, carried out the construction of the electric transmission lines for serving of the municipalities and oil fields of Southwest Louisiana and East Texas.

"While associated with the Engineering Service Corporation, I participated, along with other work, in gas engineering, including the preliminary field location for a new gas supply to serve the City of San Antonio. Subsequently, with the Moody-Seagraves interests. I had charge of collecting field data and surveying existing gas lines with a

study for a system of records, being under the supervision of Mr. H. C. Howard, Vice President and Chief Engineer. While on the work at Marshall, and while supervising there the engineering work on the reconstruction of the gas mains ahead of a large paving program by that City, I was transferred to make a survey of the possibilities of supplying natural gas to Southwest Louisiana. I devoted my entire time to this work for one year, and had direct charge of all preliminary field engineering work, the securing of fran-
[fol. 1157] chises, and assisted in making the preliminary reports and estimates.

"After the control of the United Gas System passed from Moody-Seagraves, I continued my services under the supervision of the new Vice-President, and then under the present Chief Engineer, Mr. A. D. Green.

"When the transmission lines were nearing completion, and after the distribution systems had been laid out and construction begun, I resigned from United Gas to re-enter the employment of the Moody-Seagraves to take charge of the preliminary field surveys on large proposed natural gas project. A sudden stock market break in April, 1931, caused a suspension of these plans, and I went to Florida for these same interests, where I completed the engineering surveys and estimates on a number of butane gas distribution systems, secured franchises, completed the construction of one distribution system and construction systems in two other towns. One year ago all construction operations in Florida were closed down, when I returned to my permanent home in Houston.

"At this time I am assisting Mr. H. E. Elrod."

I might state, in addition to this, during the past summer, I associated with the Engineering Service Corporation in the early part of the summer, and I made a report on the operation of the municipally owned gas plant in the City
[fol. 1158] of Houston, and investigated the question of leakage and change in design to improve the efficiency. That is a property of about 5000 meters, about the same number of meters almost they have here in Laredo.

Q. In that list of matters that you handled, you included items of design construction and preliminary operation of natural gas systems, or natural gas plants, I should say, and natural gas transmission lines. Just tell the Commis-

sion to what extent you have engaged in that character of work.

A. At Marshall, Texas, I was engineer there in charge of the construction until the time I left there.

Q. That was natural gas?

A. That was natural gas. That was reconstructing ahead of pavement. I was there until they took me off and sent me to Louisiana.

Q. What did you do in Louisiana?

A. Well, the first work I did over there I took parties and made a survey of the possibilities of using or supplying gas to Southwest Louisiana, and we made preliminary estimates and reports on that after I completed the field data. I assisted in that. That was about a 6 million dollar project.

Q. Approximately how many miles or lineal feet of [fol. 1159] natural gas transmission system lines have you constructed?

A. I have not constructed any natural gas transmission lines; I have been only in an engineering capacity on them.

Q. Supervising or designing?

A. In Louisiana probably about 75 per cent of the transmission lines were constructed while I was there, and I saw all the work constructed up to that point, and the distribution systems were laid out under my supervision in the field, and finally under Mr. Greene.

Q. Which Mr. Greene do you refer to?

A. Mr. A. D. Greene.

Q. The same man who testified here in this case?

A. Yes.

Q. Did you supervise the construction of any natural gas transmission system?

A. Not in Louisiana. In Florida I completed the construction of a butane gas system, which is natural gas in a bottled form. It is an odorless gas just as natural gas is, and I also had charge of construction and completed construction in two other towns.

Q. You were called by the City of Laredo in October of this year to prepare, with Mr. H. E. Elrod, who preceded you on the stand, an inventory and appraisal of the physical properties of South Texas Gas and Texas Border Gas Company, used and useful in serving the City of Laredo?

A. Yes, I was called over on October 12th.

[fol. 1160] Q. Of this year?

A. Yes, that was either a Wednesday or Thursday.

Q. Did you immediately proceed with that work?

A. Yes, I did. I went over the work as complete as I could, and left here on the following Tuesday for Houston.

Q. Have you devoted your entire time since then to that work?

A. Yes, the entire time.

Q. Have you, together with Mr. H. E. Elrod, prepared this inventory and appraisal which has been introduced as Exhibit "A"?

A. Yes.

Q. Turn to page 1 of the exhibit, Mr. Shaw, there appears an item of deduction, $65,257.00; will you explain that to the Commission?

A. Well, that includes the omissions on the Mirando City-Oilton transmission line, and the structures, and also the gathering system on the east triangle of the Jennings Field.

Q. In other words, that item is deducted from the total appraised value as appearing in the inventory and appraisal of the gas company's report?

A. Yes, of the South Texas Gas properties.

Q. Where is that gathering system; where does it lie with reference to this map?

A. This is the gathering line and the transmission line [fols. 1161-1172] is this right here?

Q. For the purpose of the record the gathering system lies east of the triangle?

A. Yes.

Q. In other words, between the points called check meter at Jennings Junction and Jim Hogg Junction, the line checkered in green and red?

A. That is right.

Q. Now, the gathering lines to which you referred.

A. These are the gathering lines which you have just mentioned, and the transmission line is Aguilares Junction, shown partly as 8 inch, and partly as a four inch line to Mirando City, and then from Mirando City to Oilton.

Q. All shown in red?

A. Yes.

Commissioner Thompson: That is what is left out?

A. Yes.

Commissioner Thompson: Because you figured it was not necessary here?

A. It was not used or useful to the City of Laredo.

Q. We wanted to explain those two items to the Commission as appearing here.

Commissioner Thompson: You left them out because they were not used or useful to the system?

A. Yes.

* * * * * * *

[fol. 1173] Q. Page 111 of the exhibit, transmission line equipment, Jennings Field to Pescadito Junction; the first item is 4 and one-half inch O. D. pipe, which you gave a unit price of $.7681, cost new $70.00, and an 85 per cent condition; did you have occasion to inspect that section of pipe?

A. I did not, I left the condition the same as the company had it.

Q. Is there any change in per cent condition in any of the other sections of that transmission line appearing on that page?

A. Yes, on one item.

Q. Which one?

A. The 6 and five-eighths inch O. D. pipe.

Q. Which item is that?

A. That is the third item; that is 140,265 feet. I reduced the condition from 85 to 52 per cent.

Q. Why?

A. That is, my condition on that was based on numerous observations, and from the age of the pipe.

[fols. 1174-1197] Q. From actual inspection?

A. Yes.

Q. This pipe is what we call sheet wrapped.

A. Yes, and some of the original wrapping, asbestos and felt wrapping was on it, and in my estimation this pipe would have been a good deal better off if it had just been painted and not wrapped at all, because the erosion and rust is largely on the inside, and the evidence is that it has acted largely as a catch for the water, and this line, I understand, has not been in a serviceable condition for a year. I do not see hardly how they could use it. I notice a good many sections where wooden plugs had been put in and pulled out, and numerous clamps, and they were set in at

an angle, and mostly on the bottom, showing that is where most of the leakage and corrosion was taking place.

Commissioner Thompson: It is almost unusable?

A. Yes, sir. It has to come out before very long.

[fol. 1198] Testimony of HENRY D. ELROD

Q. Now, Mr. Elrod, you call Exhibit "A", shown by the title on the cover, "Appraisal". What kind of an appraisal is this?

A. This is a reproduction appraisal.

Q. As of what date?

[fol. 1199] A. Cost new less depreciation, as of July 31, 1932.

Q. As of July 31, 1932. Now, what is your concept of a reproduction cost new less depreciation appraisal?

A. It is applying to the inventory of materials actually counted or set up, present day prices; that is, to represent the cost new of the then existing properties at the time of the appraisal.

Q. And what is the basic assumption in the case of a reproduction cost new less depreciation appraisal?

A. There are a number of them. One, perhaps the most generally used, is that if the properties as existing on a given day——

Q. Excuse me, Mr. Elrod, I am not breaking in, but let me make this explanation. When I ask you a question, I direct it to the basic assumption which you have employed. I do not want to get into a general discussion of theories, but my question in this case was meant what basic assumption have you employed in connection with your reproduction cost new less depreciation appraisal, called Exhibit "A".

A. After an inventory of the properties as they existed on a given day, has been prepared, prices as of that time are applied, and the totals subjected to the depreciation which has occurred in the properties.

Q. Well, now, aren't you talking about simply pricing, or repricing, an inventory, rather than a basic assumption [fol. 1200] for a reproduction cost new less depreciation appraisal?

A. Well, I cannot subscribe to the theory that we have to reproduce the business on the basis of the assumption that the properties are suddenly blotted out over night, and you have to rebuild a new plant.

Q. You say you cannot subscribe to that theory?

A. No.

Q. And you do not carry that theory or that concept into effect in the case of Exhibit "A"?

A. No, what I do is to take the identical properties as we find them, list them, and price them as of the present day.

Q. Now then——

Mr. Bobbitt: Are you through with your answer?

Q. I beg your pardon, I thought he was through.

A. And price them as nearly as possible to price them in view of the history of the construction, to represent as nearly as possible the fair value of the properties or the identical properties as of the date of the appraisal.

Q. Now, you say you took this inventory and priced it as near as possible, in view of the history of the construction?

A. Yes.

Q. Now, you know, of course, that the distribution system of Texas Border Gas Company was constructed piece meal and by annual expenditures from time to time over a period [fol. 1201] of 21 to 22 years, don't you?

A. Yes.

Q. And that that is the actual history of the construction of the property?

A. Yes.

Q. And which inventory of which property you have carried into Exhibit "A"?

A. Yes.

Q. Now, in making the appraisal of the distribution system property, did you price it out on the basis of prices to be applied on piece meal construction?

A. I believe I did, as nearly as possible to do it.

Q. You did as nearly as possible to do it?

A. Yes.

Q. That is, you contemplated that the property would be constructed over some 22 years period, with yearly additions, starting with a small nucleus?

A. Yes.

Q. In taking the prices of material did you contemplate purchases in wholesale quantities?

A. Yes.

Q. You contemplated that, although that would not be true by yearly additions to property which grew by accretion, would it?

A. A very large part of the property was constructed at [fols. 1202-1206] a time when the City was contemplating a paving program.

Q. That is the part of the property under paving?

A. Yes, and I have considered that a properly managed company would buy pipe in wholesale lots for making extensions.

Q. That is, that it would buy property in quantity purchases, and then carry that property on hand until it had occasion to use it?

A. That is it.

* * * * * * *

[fol. 1207] Q. Mr. Elrod, some of our people think that perhaps I did not understand you correctly, and will you state [fol. 1208] again to clear me up, and for the benefit of the record in this case, the reproduction cost new concept which you used and applied and carried forward into Exhibit "A" in this case.

A. I endeavored to reproduce the identical properties in the manner that they were originally produced as present day prices; in other words, to take the properties that are here now and in the light of such history or knowledge that I have of them to apply present day prices, to represent as nearly as possible the present fair value of the properties as they stand, as of July 31, 1932, and not a reproduction of a substitute plant.

Q. You say that that includes reproducing the same plant that the company has here now, but in the manner that it was produced or built over a period of 21 or 22 years?

A. As nearly as we can arrive at the elements in the property; that is, we have endeavored to get a fair picture—of course we cannot get it exactly accurate because it is all an estimate, but we have endeavored to get it fairly representative.

Q. I would like to know whether you subscribe to this concept of a true reproduction estimate, and that is what

it would cost to reproduce a similar plant at the present time?

A. I do not subscribe to that.

Q. And do you subscribe to the proposition that repro- [fol. 1209] duction value should include proper allowances for organization and other overhead charges that would necessarily be incurred in reproducing the utility at this date?

A. No, because I think that no cost ought to be based on pure estimate or conjecture that could be arrived at by a study of the history. In other words, if it is possible to ascertain with any definiteness what has been actually spent for these items referred to, that those costs should be used as a measuring stick or yardstick to arrive at that.

Q. And do you subscribe to the proposition that the necessary overhead expenses, such as would necessarily be incurred in reproducing the utility today, should be included?

A. Will you read that question?

(Reporter reads question to witness.)

Q. —in a true reproduction cost estimate?

A. That depends upon what you mean by the necessary overhead. I have included such overheads as I have considered necessary; such as organization, or preliminary and organization expense, engineering during construction, and administrative and legal expense.

Q. Have you based your computation of those general overhead costs on what those costs would necessarily be for the same properties that we have here in question, if [fols. 1210-1298] they were reproduced at this time?

A. Will you read that question for me, please?

(Reporter reads question to witness.)

A. Well, I might answer that question with qualification. The amounts I have allowed for the general overheads or structural overheads are not what are shown by the records. For instance, the records show that during the original construction only $400.00 was paid for taxes and I stated that I did not believe that any other taxes had been paid on items during construction, but that I did allow four thousand and some hundred dollars for that item, and all along——

Q. Now, if I may break in, is that your estimate of the taxes during construction that would be incurred if the field gathering system, transmission system and distribution system properties included in Exhibit "A", and likewise in Exhibit 1, in this case, were wiped out or rubbed out and reproduced today, just as they are?

A. I do not and cannot conceive of a situation where this property would be wiped out and blotted out of existence, and have to be reproduced. I have reproduced the properties, the plant, in as nearly as identical, as possible, a manner as it was originally produced, in order to arrive at what I consider the present fair value of the properties for rate making purposes.

* * * * * * *

[fol. 1299] TESTIMONY OF JOHN P. KINNEY

Direct examination.

By Mr. Lange:

Q. State your name.
A. John Patrick Kinney.
Q. Where do you reside, Mr. Kinney?
A. San Antonio.
Q. What is your occupation, Mr. Kinney?
A. A public accountant.
Q. You state you are a public accountant?
A. Yes.
Q. For the purpose of the record will you just briefly state to the Commission your experience in connection with that work, and your qualifications?
A. "My education consists in the attendance and completion of Grammar and High School, and I am a graduate of St. Edward's University of Austin, Texas, from which I have received the M. A. Degree in June, 1906.

"During the years 1907-1908 I attended a commercial college, after which I took a position as clerk for the Missouri Pacific Lines, and was later made station accountant and later in turn was made Auditor until the year 1914, when I matriculated in the Law Department of the University of Texas. During 1914 I also entered the practice of Public Accountancy, working with the late Milton Morris, C. P. A., and Utility Specialists, making an audit of the Water and [fol. 1300] Light Department of Austin, Texas.

"From 1914-1918 I was engaged in the practice of Public Accountancy in Dallas, Texas, being connected with the firm of Peter and Moss, Certified Public Accountants, making audits of all classes, including cities, counties, commercial enterprises, small utilities, etc., this work carrying me into practically all the southwestern states.

"During August, 1918, I enlisted in the service of the U. S. Army, being commissioned as a first lieutenant and worked as auditor in the commandeering section, Department of Purchase and Supplies, engaged principally in checking cost-plus contracts.

"From 1919 to the present time, I have been continually engaged in the practice of Public Accounting throughout the southwestern states, making all classes of audits, including utilities. I am at present engaged in making continuous audits for water and light, railway, and natural gas utilities in the Republic of Mexico.

"I am at present Staff Manager of the firm of F. G. Rodgers & Co., Certified Public Accountants, with offices located in San Antonio, Fort Worth and San Angelo, Texas.

"During 1928-1929, I was manager of our San Antonio office, and during 1930, was manager of our Fort Worth office, after which I was placed in charge of the staff of our [fol. 1301] San Antonio office, principally for the purpose of supervising a ten year audit of the City of San Antonio and its municipally owned water works, supervising some fifty or more accountants. I may further add that I have conducted independent audits for the I. & G. N. Railroad, Anheuser-Busch Brewery, and the U. S. Government War Activities.

"I am a member of 'The National Association of Cost Accountants', 'The Texas Society of Certified Public Accountants' (Associate membership). 'The National Association of University Instructors in Accounting.'"

Q. Mr. Kinney, I will ask you whether or not you were engaged by Mr. A. J. Neff sometime last year to make an audit of the Texas Border Gas Company and South Texas Gas Company for the City of Laredo?

A. I personally made the contract with Mr. Neff on behalf of our firm for such work.

Q. Did you personally take over that work, and complete it, or just a part of it?

A. That was assigned to various members of the staff.

Q. What part did you do?

A. From the inception of the Border Gas Company up to and including April 10, 1928.

Q. I will ask you whether or not in connection with that work, you computed the figures upon which this exhibit is based, and if it is from the books of the company?

[fol. 1302] A. I did the work from 1910 up to and including April 10, 1928.

Q. We desire to introduce this exhibit in evidence.

Commissioner Thompson: It will be received and marked Exhibit "E". Mr. Coates, they said some figures were in here past 1928, and I take it your objection goes to all of that. He said there were some figures up to 1932.

Mr. Coates: We object to any and all accounting data within the accounting period covered by the accounting exhibit introduced by the City in this case.

Commissioner Thompson: All right, go ahead.

By Mr. Lange:

Q. Mr. Kinney, what does this exhibit reflect?

A. This exhibit reflects the historical costs of the fixed capital as shown by the companys' books.

Q. What companies?

A. The Border Gas Company, the Texas Border Gas Company and South Texas Gas Company.

Q. Referring to the classification at the extreme left of the exhibit "Year, Border Gas Company", the first item being in 1910, "Construction", and to the column immediately to the right, the heading "Historical Costs per book". What does that mean?

A. It means the amount as shown by the records of the actual physical properties taken over by the Border Gas Company from the former franchise holders, Johnson & Risor.

[fol. 1303] Q. And the first item under that heading is $166,996.68; is that the item to which you were just referring?

A. Yes.

Q. Now, will you explain where you found that item, and what it consists of?

A. Well, the opening entry on the Border Gas Company's books was very condensed; that is, setting up the capital and surplus and its offsetting charges; in order to arrive

at and build up the capital up to April 10, 1928, it was necessary for me to establish a beginning point. The opening entry on the Border Gas Company books did not give that. It just simply stated so much fixed capital and so much cash, and notes, and so on, and the capital stock and surplus, but calling for the vouchers at this office here we had to hunt around a considerable length of time, and finally through some papers in this office here, and finally unearthed an inventory in the sum of $179,101.04, if I am not mistaken, which gave a detailed inventory of that amount, and eliminating some $12,000 which was transferred to material and supplies——

Q. A detailed inventory of what?

A. This $166,996.68.

Q. Did you have a copy of that inventory?

A. Yes.

Q. May we see it; is that item reflected on it?

[fol. 1304] A. Yes.

Q. Where did this inventory come from; where did you get it?

A. Copies of this were given to me by the then chief accountant of the Border Gas Company, Mr. Thorne.

Q. And is this one of the copies that was given to you?

A. Yes.

Q. How were these papers sent; were they given to you, or sent to you, or how did you get possession of them?

A. There were some missing vouchers that in checking out the original entries, some vouchers were missing which Mr. Thorne said possibly had been transferred to Houston. Some were here, and some were in Houston, and I asked him if he could locate certain information, would he give it to me, and he sent it to me at San Antonio.

Q. And these papers were all together, and sent to you on that request?

A. Yes.

Q. Will you state what this inventory reflects?

A. Border Gas Company, balance of investment, December 31, 1910; Real Estate, $150.00; Rights-of-way, $10.93; buildings, $14.72; tools, $34.13; fittings, $17,360.05; telephone lines from Riser to Laredo, $1,601.95; labor, teaming, freight and miscellaneous, $31,718.83; gas receivers and regulators, $2382.20; gasmeters, $5791.00; office furniture,

$332.68; horses and wagons, $225.00; automobile, $1535.00; [fols. 1305-1313] line pipe of various sizes, $117,940.61, or a total investment of $179,101.10.

Q. I will ask you whether that amount agrees with the total plant account shown in the Trustee's books?

A. That amount was the final amount shown in the Trustee's books as of the end of December for the trial balance.

Q. December of what year?

A. December 31, 1910.

Q. And when were these properties taken over by the Border Gas Company; January 1, 1911?

A. So far as the records disclose.

Q. And from that total you arrive at the total of $166,996.68 in what manner?

A. After deducting from that account the sum of $12,104.42, which was transferred to the warehouse stock account, returning the cost of the actual properties at January 1, 1911, to $166,996.68.

* * * * * * *

[fol. 1314] Q. Now, I want the witness to identify this other exhibit. Do you have a copy of this, Mr. Coates?

[fol. 1315] Mr. Coates: I cannot tell what you mean by this, Mr. Lange.

Commissioner Thompson: Are you going to introduce it, Mr. Lange?

Mr. Lange: Yes, it is a statement of the earnings of the company. Mr. Kinney, in conection with the work that you did at that time I will ask you whether you computed from the company's records a statement of the earnings of the companies?

A. Yes.

Mr. Lange: We desire to offer that exhibit at this time.

Mr. Coates: We have the same objection.

Commissioner Thompson: It will be received and marked Exhibit "H", and the objection will be noted.

By Mr. Lange:

Q. Mr. Kinney, the first page of that exhibit, Page 1, is headed Border Gas Company and Texas Border Gas Company and South Texas Gas Company comparative statement of earnings for the period ended December 31, 1931. Now,

did you compute the figures on that page from the company's books?

A. Not all of them, no.

Q. How far did you go?

A. Up to and including April 10, 1928.

Q. And from then on who did that work?

[fols. 1316-1331] A. Mr. Lewis.

* * * * * * * * *

[fol. 1332] Redirect examination.

By Mr. Lange:

Q. Just this question. I believe you testified, Mr. Kinney, that as late as the period of 1928, through the years from 1910, on through 1928, the company, as late as April, or the first months of 1928, still in computing their depreciation, brought forward, or utilized that total of $166,996.68?

A. At the end of the year when they would set up their depreciation charge against operation, they would take that into consideration.

Q. As late as the year 1928?

A. Yes, I have copies of the journal vouchers.

Q. You were asked with reference to whether or not you found there was any ownership by The Texas Company in this property; you found no evidence of actual ownership by The Texas Company of any stock or any of the property?

A. Just considerable transactions; in fact, The Texas Company had one account on the books showing all trans-

[fols. 1333-1352] actions, which was very voluminous.

Q. In making that audit you did not find any actual stock ownership by The Texas Company?

A. I did not go into the stock ownership.

Q. Were you able to find, or did you attempt to find whether The Texas Company derived any management fees from the company in that period?

A. No, I did not go into that. About the only thing regarding The Texas Company is at the close, April 10, 1928, some dividend entries passed between this company and The Texas Company; quite large dividend entries.

* * * * * * * * *

[fol. 1353] Testimony of H. E. Elrod

Q. So you have taken the information given you by [fol. 1354] somebody else?

A. Yes.

Q. Do you know whether that was information based on hauls by five ton trucks with trailers over country roads?

A. No, I do not know.

Q. Do you know of your own personal knowledge whether you could economically haul pipe with a five ton truck and trailer over this country you have to traverse?

A. It would depend on the bridges there, and you could not do it with those bridges.

Q. You would either have to use those bridges or build new bridges, wouldn't you, Mr. Elrod?

A. Well, you might be able to go around and cross the draw some place.

Q. Do you know of your own personal knowledge——

A. My information about the cost of this trucking——

Commissioner Thompson: He is merely asking you about your own information.

A. I have had no experience personally.

Q. You do not know the kind and character of truck that you would have to use, or that would be most economical to use on that character of work, do you?

A. Gas pipe line work, no. I just started to say that my information came from a contractor here in town, Mr. Wilson, who has done gas pipe line work, and who is familiar [fols. 1355-1376] with this territory.

Q. Now, Mr. Elrod, if you are going to come up here and quote what Mr. Wilson says, and he is not here subject to cross examination, that is the rankest kind of hearsay.

Commissioner Thompson: Do you have a quotation or a bid from him, an offer to do it at that price?

A. No sir, Mr. Wilson had been in my employ for some years.

Commissioner Thompson: We won't consider it.

A. I might say here it is particularly difficult for a city in a case like this to get consulting engineers to testify as to actual experience because I do not believe they are available.

Commissioner Thompson: The Commission is well aware of that, and we are very liberal in trying to help out.

A. We have made an honest and earnest endeavor to try to get at what we concluded to be a fair estimate of the fair value of this property at this time.

. . . . . .

[fols. 1377-1379] Q. Now, why did you leave out of consideration any part of that gathering system?

A. Because from the information I had it served no useful purpose for the City of Laredo.

Q. What do you mean served a useful purpose?

A. That no gas is being brought around the triangle from that field to serve Laredo.

. . . . . .

[fol. 1380] Commissioner Thompson: Do you know, as a matter of fact, whether the line from Pescadito to Jennings Junction is operated or not?

A. I believe it is in-operative; we have had information to that effect.

Commissioner Thompson: Is that the reason you left it out?

A. Are you talking about this line to the Jennings field?

Commissioner Thompson: Your information was, in effect, that the line was not used because it was in bad shape?

A. Yes.

Commissioner Thompson: It was porous like a sieve, full of holes?

A. Yes, that is the information I had.

By Mr. Coates:

Q. Who gave you that information, Mr. Elrod?

A. I got that information from Mr. Shaw and Mr. Lewis, the auditor.

Q. Through your assistant and the auditor?

A. Yes.

[fol. 1381] Q. And it was on the basis of information thus gotten that you left that gathering system in the east Jennings Field out?

A. Yes, and I have seen that line, and my judgment is that it could not economically handle gas at this time.

Q. Have you, in your experience, ever had occasion in the case of gas pipe lines to make differentiation between service efficiency and service capacity?

A. No sir.

Q. Do you know whether a gas pipe line becomes in bad condition by reason of corrosion all along its length or by reason of corrosion in what is known as hot spots?

A. I know that there are hot spots and it corrodes more there than elsewhere.

Q. And a section of pipe laid in a good bit of land might last a long time, whereas, when it has been laid in a hot spot it might have a very short life?

A. Yes.

Q. And did you know whether science has advanced enough to give absolute protection to pipe laid in a hot spot?

A. I think not.

Q. Then if a line three or four miles long had several hot spots in it, and a big leak in its hot spot, it would reduce its service efficiency?

A. Yes.

[fol. 1382] Q. Would it lose all its service capacity?

A. No.

Q. If the leaks were fixed its service capacity would be absolutely restored?

A. Yes, if the leaks were fixed.

Q. Now, where do the hot spots occur in this territory?

A. They occur in several places along the Pescadito-Jennings line, and along the line from the City of Laredo to the Carolina-Texas field.

Q. Do they occur on high land or on low ground?

A. Low ground, usually.

Q. What makes a hot spot hot?

A. The soluble salts in the soil, and the presence of moisture.

Q. That is what is generally known as alkali?

A. Yes.

Q. And it takes a combination of moisture and this alkali soil to make what is sometimes known as corrosive soil?

A. Yes.

Q. And, of course, that moisture would collect in the low places, wouldn't it?

A. Yes.

Q. Now, how many test holes were dug on the gathering system in the west Jennings field, and inspected by you?

A. None.

[fol. 1383] Q. None. Did you observe any part of that pipe in the west Jennings field gathering line?

A. No sir.

Q. How many test holes were dug on the Jennings-Pescadito transmission lines, and observed by you?

A. I do not know that any test holes were dug; that is, no test holes were dug for me.

Q. Did you observe the pipe where any test holes were dug, whether dug for you or not?

A. I have observed the pipe at several places where the pipe had been dug around, or where it was exposed in draws, and so on.

Q. That is, you observed a number of places where the pipe was either exposed or almost exposed?

A. Yes.

Q. Now, do you know, as a matter of common knowledge, that down here in this territory, some months or so ago, they had what is known as a flood?

A. Yes.

Q. And do you know whether the soil down here in this territory is very susceptible to washing; that is, washing out into gulleys, and so on?

A. I would judge so.

Q. Now, after a flood you would naturally expect the flood waters to run down into the low places, wouldn't you?

[fols. 1384-1404] A. Yes.

Q. And if it was an exceptionally heavy rain you would expect it to remove quite a lot of dirt in the water channel, wouldn't you?

A. Yes, it would erode.

Q. And the low places along this line would be the places where the hot spots would occur?

A. I might say in places observed by me where the water had eroded the earth from around the pipes, the pipes were in better condition than in some other places.

Q. What other places?

A. In places where the land was more or less flat, and the water had stood instead of being drained off.

Q. That is, the pipe was in worse condition where the water had stood around it than where the flow of the water had been continuous along the water channel?

A. Yes, most of those draws are dry arroyos, and water only courses through them after heavy rains, and runs down rapidly.

Q. Now, so where you observed the pipe was where the water had either stood around it or where the pipe had been exposed by action of the elements; is that correct?

A. Yes.

* * * * * * *

[fol. 1405] Whereupon the witness A. J. NEFF, being by the Commission first duly sworn, on oath, testified as follows:

Direct examination.

By Mr. Lange:

Q. State your name.

A. A. J. Neff.

Q. You reside in Laredo, Mr. Neff?

A. Yes.

Q. Mr. Neff, I will ask you whether or not at the time your services were engaged by the City of Laredo in connection with the appraisal of these properties of the Texas Border Gas Company, and South Texas Gas Company, you called at the gas company's office with reference to giving you data upon which to base that appraisal?

A. I did so call on them.

Q. Did you get any maps from them at that time?

A. I did.

Q. Reflecting or showing the place and condition of pipe line or their ages?

A. In the local gas office in looking through their drawings to indicate anything that would reflect the time, or anything I could find to give me information on the subject, I located a map that showed all their lines, this north and south Laredo lines, and their transmission lines, and indi-

[fol. 1406] cated the year that those lines went in. They had only the one map and would not give it to me, but they allowed me to take it and make a copy of it, and I have made two copies of it.

Q. Is that a copy of it there?

A. This is a copy of their map showing those dates of construction.

Q. Indicate on this map, first the section of transmission lines of South Texas Gas Company from Laredo to Pescadito Junction.

A. He had one notation with arrows pointing from Aguilares to Laredo, 8 inch line, 1910.

Q. 1910?

A. It shows that this line from this point here——

Q. From Laredo to where?

A. From Laredo to Reiser Field.

Q. It shows what year?

A. 1910.

Q. All right, go ahead.

A. Then beneath that line it has a section down here shown as a 12 inch line. That is from the gate station at Laredo, it shows a 12 inch line, 1925.

Q. Is that along the transmission line from Laredo towards Pescadito?

A. Yes, towards Pescadito.

[fol. 1407] Q. Is there any other year indicated?

A. Then they have a line from the check meter at Pescadito to Aguilares, 8 inch line, 1922.

Q. All right.

A. Then this line from Augilares to Carolina-Tex, 6 inch line, it shows 1923, and the line from Aguilares to Mirando and Oilton, it did not go to Oilton, but it showed a 4 inch line, 1922, and the line from Pescadito to Jennings Field was shown to be a 6 inch line, 1916, and down at—I do not know just what point, but somewhere along on this line here——

Q. What line is that?

A. That is the Jennings line between Jennings and Pescadito, they show there a 4 inch line to a well off this way somewhere.

Commissioner Thompson: Off which way?

A. In a northeasterly direction, about 4 miles, I believe, it looks like. A 4 inch line put in in 1922, and out in 1923, and that is all the notations we have on that map. Well, the north and south Laredo lines; the one south of the City was marked 4 inch, 1912, and the one north of the City on the river was marked 4 inch, 1912. Those were the notations I got.

Q. Was that map furnished to you by the gas company on your request, to work out your appraisal?

A. It was.

Q. Is that a correct copy of the map furnished to you?

[fol. 1408] A. It is as correct as I could make it.

Q. We desire to introduce this map in evidence.

Commissioner Thompson: It will be received and marked Exhibit "I".

Q. Now, Mr. Neff, at the time you were inquiring of the gas company as to data on which to make your appraisal was a map furnished to you showing the transmission line of South Texas Gas Company, Pescadito to Jennings Junction?

A. Yes, an inventory map was furnished to me on that.

Q. Do you have such map available, or a copy of it?

A. Yes, I have the map they furnished to me.

Q. Did that map show any junction at Jennings Field check meter with the transmission lines shown on this map as checkered in green and red; any physical connection?

A. The map, as I remember, was dated March, 1931, and it does not show a connection at that point.

Q. No physical connection?

A. No, sir.

Q. Do you have that map?

A. Yes.

Q. May we see it?

A. Yes. This is the 6 inch main transmission line from Jennings gas field to Pescadito Junction, date of inventory March 12, 1931; engineering department San Antonio, Texas.

[fol. 1409] Q. Was that map furnished to you by the gas company?

A. At Houston, yes.

Q. Now, refer on that map to the place which shows the southeast end of the Pescadito line.

A. Sheet Number 1 shows the Jennings end of the line.

Q. Will you point on the map where the end of that line is, and make a mark.

A. The line is shown with one gathering line going out to Jennings No. 4, which is the zero point on that inventory map. And there is a circle there which is a detail showing their gathering lines, and the line to Roma, and the detail shows no connection.

Q. No connection where?

A. No connection between the Jennings to Laredo line; the line from Bruni to Jennings is 10 inch, and to Roma is 12 inch.

Q. Does that show any physical connection between the line from Jennings to Roma, and that from Jennings to Pescadito?

A. The map shows no such connection.

Q. Did you also have another map showing no physical connections of those two transmission lines?

A. I do.

Q. We want to introduce this map he has just been testifying about.

Commissioner Thompson: It will be received and marked Exhibit "J".

[fols. 1410-1459] Q. In order to get the record correct, Mr. Neff, does that map show any physical connection between the transmission line from Pescadito to Jennings Junction marked on this map in red with the transmission line checkered in green and red on the map from Jennings Junction to Jim Hogg?

A. The detail shows there was no connection.

Q. No physical connection?

Commissioner Thompson: This was map "J" you are now referring to?

A. Yes.

* * * * * * *

[fol. 1460] Whereupon the witness Leon O. Lewis, being by the Commission first duly sworn, testified as follows:

Direct examination.

By Mr. Lange:

Q. State your name, age and residence, Mr. Lewis.

A. My name is Leon O. Lewis. I am 29 years of age, and reside at the present time in San Antonio.

Q. What is your present occupation, Mr. Lewis?

A. Public accounting.

Q. Have you prepared and can you submit to the Commission a brief statement showing your qualifications, and experience, in that line of work?

A. Yes, I have that. "I am a graduate of Clarendon High School of Clarendon, Texas, having finished that school in

1919. I attended Clarendon College for one year and in [fol. 1461] September, 1920, accepted a position in the First National Bank of Clarendon, Texas, where I was employed for five years. On the first day of January, 1926, I resigned my position as assistant cashier of that bank and enrolled in the Business Administration School of the University of Texas.

"During the time I was in the University I had a part time job keeping books for a tire concern in Austin, and during one summer was connected with the liquidation division of the State Banking Department. I took every accounting course offered by the University of Texas, and in May, 1927, passed the examination given by the State Board of Public Accountancy of Texas and was licensed to practice as a Certified Public Accountant. In June, 1928, I was graduated from the University of Texas, receiving the degree of Bachelor of Business Administration, and accepted a position as a member of the staff of Rodgers, Smith & Company, Certified Public Accountants of San Antonio, Texas.

"I was transferred to the San Angelo Office of that firm, and in May, 1929, was made manager of the San Angelo office. At that time I had direct supervision of a staff of twenty men, and my work covered audits and investigations of practically every type of industry, including oil and gas properties located in West Texas.

"In June, 1931, I was transferred back to the San Antonio office and since that time have been engaged solely upon investigations of gas utilities. In addition to this en- [fol. 1462] gagement, I was in active charge of the accounting investigation of Lone Star Gas Company, which work was undertaken by our company for the Texas Railroad Commission and the Oklahoma Utilities Commission. This engagement covered a five year period of Lone Star Gas Company's operations in Oklahoma and Texas, and a determination of historical costs of all its producing and transmission properties acquired since its organization in 1909."

Q. Mr. Lewis, were you engaged by Mr. Neff in the year 1931 to continue the work of auditing the books of the Texas Border Gas Company, and South Texas Gas Company, connecting on to where Mr. Kinney finished his part of the work.

A. My company was engaged by Mr. Neff some time during 1931. I do not know the exact date, and Mr. Kinney was assigned the engagement as to the old records, and I was assigned to check primarily a report which had been made by the company to the City. That was my first connection, to check that report for the year ending February 28, 1931.

Q. Did you, in connection with that work, have occasion to audit the books of the Texas Border Gas Company and South Texas Gas Company for the period ending April 10, 1928 to June 30, 1931?

Mr. Coates: Was that an audit or an examination?

A. Both. The period that the audit was actually made, began on February 28, 1930.

[fol. 1463] Q. And covered what period?

A. Covering first the year ended February 28, 1931. During the course of that examination it was decided to supplement that audit with one showing the operation for the year ended June 30, 1931. Then in the summer of this year, about the 1st of August, I believe, I was assigned the further engagement of auditing the operations of the two companies in question for the year ended July 31, 1932.

Q. What portion of that work comprised the detailed audit?

A. I should say that the primary objective of our investigation was for the purpose of establishing the operating revenues and expenses and the audit in that connection is detailed. In addition to that we have taken from the books, the book costs of the company's property as shown by the books. We did not make a detailed verification of those costs.

Q. Did you, in connection with that first assignment, prepare the exhibit introduced this morning as Exhibit "E," and identified by Mr. Neff, covering the portion of the work which he did and also showing the subsequent portion of the work which you did?

A. That was not all done under the first engagement, but the first engagement and the latter one together, we have brought these book costs down to July 31, 1932.

Q. Is the copy of that exhibit you have before you, is that [fols. 1464-1474] a copy of that exhibit "E"?

A. It is.

* * * * * * *

[fol. 1475] Q. Mr. Lewis, there was also introduced this morning exhibit "H", identified by Mr. Kinney, a portion of which was prepared by him, and a portion of which auditing work was done by you. Is the exhibit you have before you the one to which I refer?

A. Yes.

Q. Referring to the first page of the exhibit, comparative statement of earnings of Border Gas Company, Texas Border Gas Company and South Texas Gas Company for a 7 year period ended December 31, 1931; in order to be in consecutive order, strike that, and we will take page 2 first. [fol. 1476] That shows Border Gas Company statement of earnings from January 1, 1911, to December 31, 1924. Did you prepare any portion or compute any portion of that schedule?

A. I prepared the schedule from figures supplied by Mr. Kinney as he testified this morning.

Q. During the entire period?

A. Yes, on page 2.

Q. You did not audit the books of the company for any portion of that?

A. No sir.

Q. Then turning back to page 1, Border Gas Company, Texas Border Gas Company and South Texas Gas Company, comparative statement of earnings for the 7 year period ended December 31, 1931, did you compute these figures from the books of the company?

A. Yes.

Q. Does page 1 reflect the operating revenues, first, of the Border Gas Company for the years 1925, 1926 and 1927, and then Border Gas Company for the period up to April 10, 1928, and Texas Border Gas Company and South Texas Gas Company for the period up to December 31, 1928, and then Texas Border Gas Company and South Texas Gas Company for the three years, 1929, 1930 and 1931, showing the total operating revenues of those companies each year?

A. That is correct.

[fol. 1477] Q. As per the company's books?

A. Yes. Well, there have been some adjustments made in the years 1930 and 1931, and I do not recall whether any were made in 1929 or not.

Q. Is that the notation at the bottom of the page?

A. Yes. I have eliminated from this exhibit the operation of the Monterrey line so that it might be a comparative statement of the identical properties throughout the period shown.

Q. You also show the operating expenses of the companies named for the period from 1925 through 1931, and the totals of each. Were those figures taken from the company's books?

A. Yes, with certain adjustments as explained.

Q. And you show the net return before providing for depreciation or federal income tax for each year of the company's operation?

A. That is correct.

Q. And those totals were computed from the company's books with the adjustments you just referred to?

A. Yes, the first three years, the 1925 and 1926 and 1927 were prepared by Mr. Kinney, and he furnished me the figures for the period from January 1st to April 10, 1928, which I consolidated with the remaining figures for that period, and the last three years represent the consolidated earnings of Texas Border Gas Company and South Texas [fol. 1478] Gas Company, which I prepared.

Q. For what period as shown on this exhibit did you make a detailed audit; is any portion of this period covered by a detailed audit?

A. We made a detailed audit of operations from February 28, 1930, through July 31, 1932, and we made some analysis of the operating accounts from April 10, 1928, to February, 1931, but it was not a detailed audit.

Q. Now, returning to page 3 of the exhibit, Texas Border Gas Company, statement of earnings, April 28th to December 31, 1931, showing the operating revenues less operating expenses, and net return on invested capital before providing for depreciation for the period beginning April 10, 1928, through December 31, 1931. Were those figures reflected in the company's books or did you make the computations from figures reflected in the company's books?

A. Yes, I prepared that from my investigation of the company's books.

Q. And page 4 shows a similar statement of the earnings of South Texas Gas Company for the same period?

A. Yes.

Q. And was computed on the basis of the gas purchases at 5 cents per thousand cubic feet?

A. That is right.

Q. In connection with that exhibit, Mr. Lewis, there is [fol. 1479] attached a chart showing consolidated gas sales and operating expense of Border Gas Company, South Texas Gas Company and Texas Border Gas Company, expressed relatively in the year 1925, at 100. Did you prepare that chart?

A. Yes, I prepared it.

Q. Based on what figures are taken from what?

A. It is based on the foregoing exhibits, or, I should say, the succeeding pages of this exhibit.

Q. Will you briefly explain to the Commission what that chart discloses?

A. That chart was designed to indicate the trends of the general expenses, transmission and distribution operations, and transmission and distribution system maintenance, and the gas sales, and I have used the year 1925 as 100 in all instances. In other words, the gas sale line which is a solid line.

Q. That is the solid line appearing on the chart?

A. Yes, taking the year 1925 as 100 shows each year's gas sales in dollars expressed in relation to the gas sales in 1925. In other words, each year is the per cent of 1925. That same explanation is true of the other three lines appearing on this chart. The general expense is expressed in each year in relative terms to the general expenses in 1925.

Q. Mr. Lewis, is it or not a significant fact in connection [fol. 1480] with this chart that the three items, transmission and distribution operation, transmission and distribution maintenance, and gas sales all show a decline specially through the latter part of 1931 and through the 1932 period, as against the incline of the general expense line?

A. That is correct.

Commissioner Thompson: Have you made similar charts for other lines of business or other utilities?

A. Yes, I have made such charts.

Commissioner Thompson: What is the general experience as to that general expense line?

A. The general trend of business for the last two years—now, you realize I am saying this from a very limited experience.

Commissioner Thompson: Yes, just your experience.

A. The revenues——

Commissioner Thompson: I know that they all go down, but explain this expense, how does it go. How does that curve generally run the past few years; up or down?

A. It is down, but not in proportion to revenues.

Commissioner Thompson: Expenses have been going down?

A. Yes.

By Mr. Lange:

Q. This chart, however, reflects the contrary with refer-
[fol. 1481] ence to the end of 1931 and the period in 1932?

A. There is a relative increase for the year 1931, and the year ended July 31, 1932, in general expense.

Q. As against a decline in transmission and distribution operation expense and transmission and distribution maintenance expense and gas sales?

A. That is correct.

Commissioner Thompson: We will take a recess now until 8:00 P. M.

Whereupon a recess was taken at 6:00 o'clock P. M., until 8:00 o'clock P. M.

Whereupon the witness Leon O. Lewis resumed the stand for further direct examination by Mr. Lange:

Q. Mr. Lewis, you stated this afternoon that you were engaged by the City of Laredo in June, I think, of this year, to make an audit of the operations of the Texas Border Gas Company and South Texas Gas Company to be used in this rate case?

A. I was.

Q. And did you make such an audit?

A. I did.

Q. For what period?

A. The audit I made was for the 12 months ended July 31, 1931.

[fols. 1482-1486] Q. And prior to that time you had made a detailed audit covering what period prior to that?

A. Prior to that we had made detailed audit of operations covering the 12 months ended February 28, 1931, and June 30, 1930. I might say in connection with that that while I was in Houston on this last work the city requested me to get operating figures to fill in the gap between February 28, 1931, and April 10, 1928, and I have done that.

Q. I will ask you whether, in connection with that work, you have prepared an exhibit, and whether this is the exhibit which you prepared?

A. Yes, this is the exhibit which I have prepared.

Q. We desire to introduce that.

Commissioner Thompson: It will be received and marked Exhibit "L".

Q. Mr. Lewis, turn to page 1 of that exhibit, South Texas Gas Company and Texas Border Gas Company, consolidated statement of earnings from operations within the city limits of Laredo for the years ending June 30, 1929, 1930 and 1931, and July 31, 1932. The statement appearing on that page, or the figures appearing on that page, show first the operating revenues, gas sales, forfeited discounts, and other operating revenues for the calendar years ending June 30, 1929, 1930 and 1931, and for the year ended July 31, 1932.

* * * * * * *

[fol. 1487] Q. Now, in connection with the detailed audit that you made of these two companies, Mr. Lewis, I will ask you whether you obtained, or whether you made an effort to and did obtain the voucher numbers showing, or the vouchers of the gas company, showing from what particular gas wells gas was purchased by South Texas Gas Company that was delivered to Laredo?

A. I have in my papers an analysis of the——

Q. During the 12 months period ended July 31, 1932?

[fol. 1488] A. I have in my papers a summary analysis for the invoices for gas that were rendered by the South Texas Production Company to the South Texas Gas Company. Those invoices indicate merely that it was delivered to the Monterrey line or the Laredo line.

Q. Does each invoice indicate specifically where the gas was delivered to each line?

A. Yes, it indicates from what well it was taken, and to what line it was delivered; that is, either to the Laredo district lines or to the Monterrey line.

Q. Did you make a careful check to ascertain all such statements during that 12 months period?

A. The summary statement I have is a summary of all invoices for the gas purchases, and ties into a general account for gas purchased.

Q. For the period designated; that is, ended July 31, 1932?

A. Yes.

Q. Do you have that summary available?

A. Yes, I have it.

Q. Do those statements which you got from the gas company's records give the name and description of the well from which the gas was taken by name?

A. Yes, it gives the name of the well.

Q. Will you give us the names of each of those as you found them.

[fol. 1489] A. Those invoices show——

Q. Those that show gas delivered to the Laredo line.

A. Those invoices show the gas delivered to the Killam four inch line, which apparently serves Mirando City, Bruni and Oilton under one section, and the gas deliveries to the Hebbronville line in another section, and the gas delivered to the Laredo line in a third section, and gas deliveries to the Monterrey line in a fourth section.

Q. All right, now I want the detail of the gas delivered to the Laredo line.

A. Yes. Do you want the owners of the wells?

Q. Yes, the total description as reflected by the company's records.

A. You do not care for the volume of gas delivered from each well, do you?

Q. You might give us that also; while that is not exactly pertinent to the inquiry, we want to show where all the gas delivered to the Laredo area, from what particular well it was taken from.

Commissioner Thompson: As a matter of public interest?

Q. No sir, particularly it is to show with reference to this triangle; we are going to show that no gas came around that way. The volume is not really necessary; give us the first one, Mr. Lewis.

[fol. 1490] A. Southern Gas Utilities, A. C. DeLaGarza No. 1.

Q. All right.

A. Southern Gas Utilities, Charles Webster No. 1.
Q. All right.
A. Snowden-McSweeney, A. C. DeLaGarza No. 1.
Q. All right.
A. Foster Barnsley, A. C. DeLaGarza No. 2.
Q. All right.
A. Roark-Simpson-Sangster, Roark-Simpson No. 1.
Q. All right.
A. George S. Marshall, Charles Webster No. 1.
Q. All right.
A. Associated Oil Company, Charles Webster F-1.
Q. All right.
A. Morgan-Gibble-Sterling, Morgan-Gibble No. 1.
Q. All right.
A. South Texas Production Company, Cuellar Brothers No. 1.
Q. All right.
A. Washington-Texas Oil & Gas Company, Foster-Barnsley No. 1.
Q. That is all one name?
A. Washington Oil & Gas Company is the owner of the well, I suppose, and Foster Barnsley is the name of the well.
Q. All right.
A. Southern Gas Utilities, A. C. DeLaGarza No. 2.
Q. All right.
[fol. 1491] A. E. A. Sterling, DeLaGarza No. 1.
Q. All right.
A. I believe that is all the deliveries shown to the Laredo line.
Q. During the 12 months period ended July 31, 1932?
A. That is correct.
Q. Now, give us a list of those wells making delivery to the Roma-Monterrey line.

Commissioner Thompson: What bearing does that have on Laredo?

Q. It has this, if the Commission please: They have attempted to saddle this gathering line on to Laredo, when it is only used for deliveries to Roma.

Commissioner Thompson: All right, go ahead.

A. You want the invoice showing deliveries to the Roma-Monterrey line?
Q. That is right.

A. South Texas Production Company, J. D. Jennings No. 4.
Q. All right.
A. South Texas Production Company, J. D. Jennings No. 6.
Q. All right.
A. South Texas Production Company, Humble Martinez No. 1.
Q. All right.
A. Southern Gas Utilities, R. Hinnant No. 4.
[fol. 1492] Q. All right.
A. United Production Company, F. G. Martinez No. 3.
Q. All right.
A. United Production Corporation, F. G. Martinez No. 4.
Q. All right.
A. United Production Company, F. G. Martinez No. 5.
Q. All right.
A. Nordham and Morris, DeLosSantos No. 2.
Q. All right.
A. Nordham and Morris, DeLosSantos No. 1.
Q. All right.
A. Nordham and Morris, E. B. DeLosSantos No. 2.
Q. All right.
A. Nordham and Morris, DeLosSantos No. 3.
Q. All right.
A. H. H. Coffield, S. Bustamente No. 1.
Q. All right.
A. South Texas Production Company, Marie B. Guittierrez No. 1.
Q. All right.
A. South Texas Production Company, J. D. Jennings No. 1.
Q. All right.
A. South Texas Production Company, J. D. Jennings No. 2.
Q. All right.
A. South Texas Production Company, J. D. Jennings No. 5.
[fol. 1493] Q. All right.
A. South Texas Production Company, Cuellar Brothers No. 1.
Q. All right.
A. And there was South Texas Production Company, J. D. Jennings No. 10. I do not believe there were any deliveries

from No. 10 during that period; there were some deliveries apparently that came through from the Jim Hogg check meter, but I do not know the origin of that gas.

Mr. Coates: You say you do not know the origin of that gas?

A. No. I do not know that there was any that came through there; let me look.

By Mr. Lange:

Q. You did not make any check of the Southern Gas?

A. No, some gas came through there, but I do not know the origin; that was delivered to the Monterrey line.

Q. It was confined to South Texas Gas Company's purchases during that 12 months period?

A. That is right.

Q. Mr. Lewis, in connection with Exhibit "L", or rather appearing in Exhibit "L" at page 10 of the exhibit, South Texas Gas Company and Texas Border Gas Company summary of questionable items contained in the consolidated statement of earnings from operations within the city limits of Laredo for the years ending June 30, 1929, 1930, 1931 and [fol. 1494] the year ended July 31, 1932, then on pages 11 and 12, it shows separately South Texas Gas Company from Texas Border Gas Company as to those questionable items. The summary reflected on page 10 is the total of those reflected on pages 11 and 12?

A. That is correct.

Q. Now, how far back from July 31, 1932, does your detailed audit go; does it include the entire period beginning June 31, 1929?

A. No, the detailed audit is not in these statements; you might say it started July 1, 1930. There was some detail back of that, back to February, 1930, but inasmuch as we would not have a complete year there, some of those adjustments were not made.

Commissioner Thompson: Where you say "questionable items" what do you mean by questionable?

A. That is items that I was not sure in my mind as to the support I had for; items that was requested by the City to show separately, that they might be brought to the attention of the Commission.

Commissioner Thompson: You did not know just what to do with them?

A. Well, they are subject to some controversy, apparently.

Mr. Lange: If the Commission please, we directed the [fol. 1495] auditor in connection with that particular phase of the work to prepare for us figures as to a certain character of items, and we are frank to say that whether or not we are able to specifically tie them down, we do not know. We attempted to rivet them down as well as we could, but I do not know whether the record discloses it or not, but the City of Laredo would be unable to bear this financial burden, and we might not be able to bear it all the way through, but we have done the best we could. I do believe that with additional auditing and expense, it would have entailed a considerable expense, but we could have pared out a considerable number of items, but we had to be confined within certain limits which we could not go beyond.

Commissioner Thompson: I noted management fees here, and loss on bad debts and advertising. Do you question those items?

Mr. Lange: Yes sir, we do.

By Mr. Lange:

Q. Mr. Lewis, when were those management fees first incurred, so far as the records show?

A. As I stated, the first work I did started with the date of April 10, 1928, at the time South Texas Gas Company acquired these properties from the old Border Gas Company. Sometime later in the year 1928, I think in October, they entered into a management feet with the United Gas Company to pay a management fee of 2 and one-half per [fol. 1496] cent of the gross revenues. Now, that contract remained in effect until June, 1930, at which time they changed, to a certain extent, on the charges of that management fee. The reason I set that item out is because I had no support of those items other than the charges themselves, and inasmuch as they were paid to the holding company I had no way of knowing, without going into the holding company's records, whether that represented a legitimate operating expense, or was in fact a distribution of profit.

Q. Now, turning to page 9 of the exhibit, under operating expense, take that item of general expense. Do you have a detailed audit of that particular item for the year ending July 31, 1932?

A. Do you refer to the item of $20,122.54, General Office and General Expense?

Q. I wanted—well, we will take that one first.

A. Do you want the classification of the items that make up that general expense?

Q. Yes.

A. That is the Texas Border Gas Company.

Q. That is it.

A. Yes, I have the classification as shown by the company's books. Shall I read the detail?

Q. Yes.

A. Travelling expense, $77.01; Law expense, $600.00; [fol. 1497] Fire Insurance, $248.88.

Q. I just wanted the items referring to the managing fee.

A. Did you want to know the amount of the management fee charged to the Texas Border Gas Company?

Q. Yes.

A. You will find that item on page 12 of the exhibit in the fourth section, the year ended July 31, 1932, management fees charged to general expense, total $1785.98.

Q. The amount allocated to Laredo is what?

A. 72.17 per cent, or $1288.94. The latter figure is the amount included on page 1 of the exhibit under general expense.

Q. I will ask you how you arrived at this per cent allocation?

A. The general expense of both companies I allocated on the basis of gross revenues.

Q. Now, the next item on page 12, under the year ended July 31, 1932, is Loss on Bad Debts; that comes out of the Customers Expense item; is that correct?

A. That amount is included in the foregoing exhibit under the classification of Customers Expense.

Q. And showing a total of $2773.64 allocated to Laredo for that period?

A. That is right.

[fol. 1498] Q. And the next item is Loss on Bad Debts coming under the general expense item, of which $100.83 is allocated to Laredo?

A. That is right.

Mr. Coates: Mr. Lange, it will make the record more compact if you will have him state the basis of his allocation.

Q. Yes, if you will do that.

A. It might make it a little clearer if I do it by companies separately because I did not use the same basis for both companies. Referring to the South Texas Gas Company, gas purchases, of course, is not an allocated item; that is a direct item. Transmission system operations—would you like to have the percentages?

Mr. Coates: Yes, the basis of the allocation and the allocated percentages.

A. It will be a little different percentage each year.

Mr. Coates: Do you mean a different method of allocation?

A. No, the method is the same, but the percentages will vary slightly from year to year. I will give you the year ending July 31, 1932.

Mr. Coates: Yes, that is the one we are particularly concerned with.

A. South Texas Gas Company, transmission system oper- [fol. 1499] ations, I have allocated on the basis of M. C. F. deliveries allocating to miscellaneous sales, 1.58 per cent; to the Monterrey line 61.30 per cent; to the other towns, I have called it, 3.14 per cent; to Laredo, outside the city limits, 6.01 per cent, and to the total inside the city of Laredo—no, those are the wrong percentages. Let's start over. Now, let me go ahead and give these and it will serve another purpose; 27.97 per cent to inside the city of Laredo. Those percentages are the percentages of gross revenue of South Texas Gas Company for the year ended July 31, 1932, and I have used those ratios instead of transmission system operations, as I stated; I have used this percentage for distributing the general expense.

Mr. Coates: I don't like to have to cut in on you, but neither I nor Mr. Womack here understand you. You changed on us in the middle there.

A. I realize that.

Mr. Coates: My notes show that you allocated general expense on the basis of gross revenue.

A. That's right.

Mr. Coates: And you allocated transmission system maintenance and operations expense on the basis of M. C. F. deliveries?

A. That is right.

Mr. Coates: And were the percentages you gave gross [fols. 1500-1507] revenues or M. C. F. deliveries?

A. Gross revenues. That is the basis I used for distributing the general expense.

Mr. Coates: The expense you have just given are gross revenues?

A. Yes, and that was used in allocating the general expense of South Texas Gas Company.

Mr. Coates: Are you about to give the percentages allocated on M. C. F. deliveries?

A. Yes. Miscellaneous industrial sales or right-of-way sales, 1.57 per cent; Monterrey line, 71.76 per cent; the other towns, 1.75 per cent; Laredo outside the city limits, 5.73 per cent; inside the city limits of Laredo, 19.19 per cent.

Mr. Coates: Now, you have allocated both transmission system maintenance and operations on this M. C. F. basis?

A. That is correct. The taxes I have allocated in all cases, or in case of local property taxes I have allocated direct; in the case of gross production taxes I have allocated on the basis of gross gas sales. The franchise tax I have allocated on the basis of revenue.

* * * * * * *

[fol. 1508] Q. Mr. Lewis, with reference to the rate of depreciation, what do the company's books reflect as to the depreciation shown for the year ending July 31, 1932; what character of depreciation is set up, or what rate?

A. The company during that period set up a retirement reserve each month. That reserve is set up in round figures, and, as I understand it, is supposed to take care of the retirements as they occur. As to the computation of [fol. 1509] that reserve, I am not informed.

Q. Do you know whether that reserve is set up to take care of any specific property or specifically the properties of South Texas Gas Company and Texas Border Gas Company, the physical properties?

A. The amounts set up on the Texas Border Gas Company's books and the South Texas books would be supposed to take care of the retirement of those two companies.

Q. Is it based on any particular total valuation of properties or total sum of the properties reflected by the books as owned by these two companies for that period?

A. As I stated, I do not know how it is computed. It is computed, I understand, by the United Gas Public Service Company, and I did not go into their records, but it has no relation to the fixed assets, or fixed capital of these two companies, so far as I can learn. I mean there is no particular rate used. It might be $300.00 one month, and $1500.00 the next. It depends on their retirement program, as I understand it.

Q. In your experience as an auditor, on what basis is depreciation usually computed?

A. Do you mean how is it computed by the companies themselves?

Q. With relation to the properties.

A. Ordinarily, depreciation is computed on some per cent by estimating the life of the property and to write that [fol. 1510-1534] property off over that useful life.

Q. In other words, it has some relation to the property of the company involved?

A. Ordinarily. However, in the case of utilities my observation has been that they have not followed any set rules for depreciating property.

Q. No particular set rule. Now then, for the period preceding, for the year ended June 30, 1931, what rate of depreciation was set up by the company?

A. They used the same method.

Q. During the year preceding that, what rate of depreciation was set up?

A. That would be the year ending June 30, 1930, wouldn't it?

Q. Yes.

A. For the year ending June 30, 1930, the company, on the Texas Border Gas Company books, used a rate of 2 per cent of depreciable property until May, 1930, and at that time they changed the policy and started setting up this retirement reserve of even figures. The South Texas Gas Company for that period used the rate of 3 and three-fourths per cent until May, 1930, at which time they went on the retirement theory.

* * * * * * *

[fol. 1535] Testimony of Leon O. Lewis

. . . . . .

A. I have attempted in my statements of operations to set up the operations of the company as reflected by the books with certain adjustments that I thought should be made.

Q. Well, in setting up the reports or exhibit, which have been introduced in evidence in this case, have you been content to set forth, after adjustments for mistakes and inaccuracies what the books show, and let the results speak for themselves?

A. No, I have made some adjustments of items that I thought were not properly contained in the account.

[fol. 1536] Q. And have you used any foresight to arrive at or obtain any predetermined result?

A. No sir, my object has been all the time to establish a correct operating net return, and whether it be large or small, the correct return.

Q. Of course you never have operated a public utility, have you?

A. No sir.

Q. Or a business like this business, of any sort?

A. No sir.

Q. You appear here entirely in the role of an accountant?

A. That's right.

Q. And have you in any respect or anywhere in the exhibit introduced by you attempted to substitute your judgment for the judgment of the managing officials of the company?

A. Well, I have made some adjustments. I do not know whether you would construe that as substituting my judgment.

Mr. Bobbitt: In what respect do you mean he has substituted his judgment for that of the officials with respect to accounting?

Q. With respect to reflecting in summarized form the actual financial transactions of the company as shown by the books.

A. I believe I mentioned last night that I had made some adjustments. Now, as to the interpretation of why I made those adjustments——

[fol. 1537] Q. Now, Mr. Lewis, you understand that every dolar spent in operations is spent to obtain a certain result, don't you?

A. Theoretically, it is.

Q. Or at least the managing officers using their best judgment and foresight, the best of which they are capable, they believed and hoped that each dollar expended would bring back to them a certain result.

Mr. Lange: If the Commission please, that would be substituting his opinion as to what the management had in their mind when they did that.

Commissioner Thompson: They did hope to make a profit; that is the general attitude.

A. I give any man in business the benefit of good intentions, and the hope to make a profit. I do not believe they would just throw money away. Any money he spend- he hopes to get back in some form or another.

Q. Now, in connection with Exhibit "L" you have certain pages in there which you have styled, for lack of a better name, questionable items.

A. That is correct.

Q. Now, is there any doubt in your mind that each item shown under your colection of questionable items was an actual out-of-pocket expenditure, spent where it is shown to be, and expended?

[fol. 1538] A. There is no doubt in my mind but that the two companies in question actually paid these amounts.

Q. And that where a questionable item is shown, as a loss, that it was determined to be a loss after every reasonable ordinary business effort to collect it.

A. You mean in connection with the bad debts?

Q. Yes.

A. The figures I have here are the reserve figures as set up by the company, and from all appearances that reserve is not excessive, and during the year ended July 31, 1932, that reserve was considerably reduced by virtue of charging off items which had their origin in 1929 and 1930, but the figures here are the reserve set up monthly by the company.

Q. Of course where you set up a reserve during the current year for bad debts or anything of that sort, the debts for which that reserve are set up are generally those actually incurred in some previous year, or at some previous

time, and there has been a lapse of time in an effort to collect, and after a reasonable lapse of time it is determined that this amount should be classed as uncollectibles; isn't that correct?

A. That question is so long I did not follow you, Mr. Coates. Would you mind reading that question.

Q. I will change the question. You would not expect all the uncollectibles or bad debts for the period ending July [fol. 1539] 31, 1932, to be determined as at July 31, 1932, would you?

A. No sir, that would be impossible, because the large per cent of those accounts were not even due at that time.

Q. I believe you have already stated, or perhaps only suggested that in connection with page 12 of the Exhibit "L" you gave the most careful attention, there, so far as so-called questionable items are concerned, to the year ended July 31, 1932?

A. Well, the last two years of the exhibit.

Q. The last two years of the exhibit?

A. Yes.

Q. And that a good many, if not all, of the same character of items as you have shown for the period ending in 1931, and the period ending in 1932, likewise appears in the period ending in 1929 and 1930, respectively?

A. I will not say that all of them occurred, but during those two years I note that they included in the payroll set up of these two companies, an amount set up which was paid to the United Gas, and I have not attempted to segregate that amount of payroll because I did not make a detailed investigation of the two years. As to the general office expense prorated there has been a change in the classification and manner of handling these items so that now expenses which would formerly have been charged as general payroll are now under the classification of general office prorated.

[fol. 1540] Q. Is it your understanding that the United Gas System as now set up is composed of the properties formerly owned by a great many separate corporations?

A. Yes, there were quite a number of separate corporations.

Q. And each such separate corporations generally speaking had its own complete operating organization?

A. I cannot testify, Mr. Coates, to any of the other corporations except these two.

Q. And do the accounts and your investigation of the accounts indicate that an attempt has been made to more or less integrate and unify the operations which are capable of integration and unification?

A. The attempt has been and is being made to get all these companies as nearly as possible into one operating unit.

Q. And where each company may have had its own managing or executive officer before, the attempt has been made specially in the last two year period, to have one executive handle in his particular capacity as many companies as possible?

A. That has been done, yes.

Q. And where there may have been separate engineers giving their entire time to one company before, an attempt has been made to have the general engineering department handle as nearly as possible the engineering work for the properties of all the former constituent companies?

[fol. 1541] A. I suppose that is true, Mr. Coates. Of course I do not know anything about the organization of the United Gas Public Service Company, but I do know that company performs services in the way of engineering, and purchasing, and the general office of that company likewise serves South Texas Gas and Texas Border Gas.

Q. That carries on down to the accounting work of the two companies?

A. Yes, the general books of these two companies are kept in the general office in Houston.

Q. And carries on down, for example, through the insurance department; instead of each company placing its own insurance they group that insurance in one department and pay it out in one lump sum, do they not?

A. I don't know. There are charges for insurance that come from the general office, but I do not know the nature of the protection.

Q. That is likewise true of the new business department; they attempt to let one new business department, insofar as it can, and insofar as a general department can handle that work, do a substantial part of it?

A. Yes, there are charges for new business expense which comes on the general office. You understand my testimony in connection with United Gas is my reaction to the things I have seen on these two companies.

[fol. 1542] Q. Do you happen to know whether the salary of the local manager for Texas Border Gas Company; that

is, Mr. Stein, is carried on the general office payroll?

A. I do not know where it is carried. It is not on the Texas Border payroll.

Q. And you assume it is carried——

A. I assume he gets paid, yes.

Q. And a part of the legal expense is carried on the general office payroll?

A. Yes.

Commissioner Thompson: I take it from that question and answer that all the management comes from the management company?

Q. Not necessarily, no sir. These operations have been integrated and a great many services are performed by the general engineering department and accounting department, and insurance department, that were formerly performed by the local and separate companies. You could not transfer all your field operations into the head office. The charges that are made are not fees, but simply allocated expense for such as hire and rent and so forth of those various departments.

Commissioner Thompson: Even the local manager; if he handles half a dozen towns he is prorated?

Q. For instance, Mr. Stein, the local manager here, has [fol. 1543] his salary carried on the general office payroll, and he handles not only Laredo but these outlying towns. The attempt has been made to have one man not only take care of a local situation but to cover as much territory as possible, and of course Mr. Stein's salary is not charged solely to Laredo, but it is prorated among these various towns. Now, in Exhibit "H" on the last page you set up certain curves. You take first your starting point, the year 1925?

A. That is correct.

Q. Why did you select that year?

A. In a chart of this kind, which is purely for relative purposes, it would not matter what year you take. I started with the year 1925 so that I might show on this chart two complete years of operation under the management of the old Border Gas Company of the same properties.

Q. The operations for the size and extent of that business at that time, and likewise the character of the business.

A. Well, the South Texas Gas Company at that time took over the properties formerly operated by the Border Gas Company.

Q. Now, I notice your plain white line shows gas sales; is that in dollars or M. C. F.?

A. That is in dollars.

Q. That is in dollars. Then the next line above that.

A. I mean that represents the relatives in dollars. None [fol. 1544] of the curves are in dollars; they are all in relatives.

Q. Now, the next line above that is the transmission and distribution system maintenance?

A. That is correct.

Q. And that shows that the distribution and transmission system maintenance reached its low ebb, you might say, in 1929?

A. That is correct.

Q. Do you know whether in 1929 the present management of this property was then operating it?

A. I am not sure. I believe these companies went under the present management in May or June, 1930.

Q. Now, the next line above transmission and distribution system maintenance on the chart, shown on the last page of Exhibit "H" is transmission and distribution system operations?

A. That is correct.

Q. Now, for the year 1930 the transmission and distribution system operations expenses are on a distinctly downward trend, are they not?

A. For what period?

Q. For the year of 1931.

A. Yes, distinctly downward.

Q. And that downward trend has been projected in and is still downward into the year 1932?

[fol. 1545] A. That is correct.

Q. On the other hand, for the year 1931, the trend of what you might call general expense is upward, is it not?

A. That is correct.

Q. And just for the purposes of illustration, if you should combine these two curves, general expense and transmission and distribution system operations, one would pretty well offset the other, wouldn't it, for the year 1931 and the year 1932?

A. I would have to compute those figures to know what the exact effect would be. It is an increase in one and a decrease in the other, and it would tend to smooth out the curve if you were to combine them.

Q. Yes. That is on this chart, take the vertical line which you have numbered at the bottom, 1930, and starting with a fixed point on that line your general expense is upward during the year 1931?

A. That is correct.

Q. And at what I would call about a 25 or 30 degree angle from horizontal?

A. Well, I cannot state what I think that angle is; it is something less than 45 degrees, I would say.

Q. Something less than 45 degrees. On the other hand, the transmission and distribution system operations extend downward at an angle of about 45 degrees, doesn't it?

[fol. 1546] A. I do not believe the degree on a chart of this type has any particular meaning, Mr. Coates. You have to combine the two totals of 1925, and get your relative there before you could tell what sort of a curve you would have.

Q. You do not think the angles on this chart have any particular meaning?

A. They might to you, but I cannot look at it that way.

Q. Is setting up this chart your own idea?

A. Not solely; I have seen like charts.

Q. You meant to represent by the angles and the sharpness of the angles shown on here increases in certain expenses and decreases in others, didn't you?

A. I attempted to show the relative positions at these various dates of the revenues and operating expenses.

Q. And this chart at least to one not learned in reading these charts, indicates that the angles of these lines and the way they project themselves are meant to graphically illustrate in one case the increase in general expenses, and in the other case the decrease in transmission and distribution operations?

A. That is correct.

Q. Now, does the fact that this company has been attempting to integrate its operations, and in the process of doing so has carried into its general expense many expenses that were theretofore charged locally, and would be charged [fol. 1547] to transmission and distribution operation, have anything to do with the trend of the general expense and the transmission and distribution operations curves?

A. It might have some effect; I do not know how much.

Q. It might have some effect?

A. I know the accounts have been reclassified, sometimes as often as four and five times a year.

Q. Of course if the transmission and distribution operation expense was to remain relatively stable; that is, on practically a flat line, and the general expense line was to have a distinct trend upwards, that would mean an increase or loading on of general expense, wouldn't it?

A. It might or might not. There might be some project underway which would increase the general expenses, whereas the operations—all expenses do not follow the same trend at all times. For instance, in a bad year you might increase your advertising expense in order to try to get back some of the business you used to have, and your other operating expenses you might curtail in order to try to make some money.

Q. Would you increase that advertising in a bad year to get some business; would you call that a questionable account, Mr. Lewis?

A. You would have to wait and see what the trend would be.

Q. Placing yourself in the place of the managing official, [fol. 1548] and having to use business foresight and judgment, if they thought they could get some more business by advertising and then failed to do so would you say that was a questionable item?

A. It might be questioned in some ways. I would say that a man is justified in taking any means he can to increase his business, if he honestly believes it will help; that is what he is in business for.

Q. Then you would not measure the propriety of the expense by the result it obtained, looking at it from the point of view of hindsight, rather than the point of view of foresight, would you?

A. No, you would assume good intentions at the outset.

Q. But the upward trend of the general expense curves, and the downward trend of the transmission and distribution system operations curves, just looking at these curves as you have set them up graphically, they tend to compensate each other, do they not?

A. If the two expenses were combined I believe that it would represent a fairly straight curve. As I said, I would have to get those figures before I could tell definitely.

Q. Now, Mr. Lewis, with respect to the apportionment of the operating expenses of the South Texas Gas Company. You heard Mr. Womack's testimony, did you not?

A. Yes.

[fol. 1549] Q. And you heard his testimony to the effect that for the purpose of getting a general division of the operating expenses of South Texas Gas Company he divided the expenses first into what he called the Laredo district of the transmission lines, and the Roma or Monterrey district of the transmission lines?

A. That is correct.

Q. And that he made that division of the basis of a computation made by the chief engineer of the company, being the proportion of lineal and three inch equivalent miles to the entire lineal and three inch equivalent miles?

A. That is correct.

Q. And then by that means, having obtained a portion of the total operating expenses for the Laredo division of the transmission system lines, he then went ahead and apportioned those expenses between the various marketing or delivery points of the gas?

A. That is correct.

Q. Now, you have not used the method that Mr. Womack employed?

A. No sir, I have not.

Q. You have taken the operating expense of the South Texas Gas Company as a whole, including both the Laredo division and the Monterrey line, and have applied certain apportionment factors to that operating expense as a whole, have you not?

A. That is correct.

[fol. 1550] Q. And as I recall your testimony, in the case of general expense, you apportioned that on the basis of gross revenues?

A. That is correct.

Q. That is, you gave to what Mr. Womack called the Laredo division, the portion of general expense, which the gross revenues from the sales in the Laredo division bore to the total gross revenues of South Texas Gas Company?

A. That is correct.

Q. And in the same way you gave to the Monterrey line the portion of general expense which the total gross revenues from the delivery of gas to the Monterrey line bore to the total of the gross revenues of the company?

A. Yes.

Q. And in the case of other operating expenses, except taxes, you apportioned the total operating expense of South Texas Gas Company on the basis of M. C. F. deliveries to each marketing point?

A. That is right.

Q. Now, for the purpose—and, of course, the direct expenses, such as the purchase price of gas at five cents, there was no allocation, was there?

A. No, that was direct to the point where the gas was sold with an adjustment for the unaccounted for gas in the transmission lines.

Q. And the taxes were apportioned on the basis shown in the records already?

[fol. 1551] A. Yes.

Q. Now, for the purpose of convenience, let us call the general expense and the operating expense, other than gas, the allocated expenses so you will understand what I mean.

A. You mean by the allocated expense, the general expense and the transmission system operations, and maintenance expense?

Q. Yes, everything except the purchase price of gas and taxes.

A. Yes.

Q. By the way, did you work out your apportionment factor?

A. Yes, I worked them out.

Q. Do they reflect your judgment?

A. Yes.

Q. And solely your judgment?

A. Well, I should not say solely my judgment because I did discuss the matter of allocation with my principals, and others associated with me.

Q. And after such discussion did you make any change in the basis of allocation that you had made before that consultation?

A. I do not believe I worked that out before consulation; it was worked out after we had discussed all angles of it.

Q. Now, Mr. Lewis, the working out of such an apportionment factor would involve certain knowledge of the operations of the company, wouldn't it?

[fol. 1552] A. Yes, it would involve quite a bit of informa-

tion concerning the policies of the company and the general operating conditions.

Q. Of course, on the books of account of the company it is true that these expenses are carried as a whole, and are not allocated?

A. Yes, it would be, I should say, impractical for the company to attempt to make any direct allocation of these expenses on its books.

Q. And this allocation is simply made for the purposes of this case, for the purpose of getting at the operation expenses properly chargeable to inside the city of Laredo?

A. That is correct.

Q. Now, don't you understand that with the exception of the purchase price of gas these allocated expenses would go on and be incurred in a relatively uniform amount, if this utility, the South Texas Gas Company, remained in constant readiness to serve whether it delivered any gas or not?

A. Generally speaking, I would say that the expense would be there, a good part of it, at least, whether they delivered any gas or not.

Q. That is, if they were there ready to serve?

A. If they had their operating personnel surely the operating costs would go on, and the maintenance cost, whether they were actually doing anything or not.

Q. And that allocated expense would not vary in any [fol. 1553] appreciable degree with the extent of the operation?

A. Do you mean by the extent of operations, the deliveries of gas?

Q. Yes.

A. Generally speaking, I should say that it would not be severely changed, but in addition to general theories in this connection, I have studied the past performance and past operations of the company in an effort to get at some factor which was related to the operating and maintenance expense, and I have selected this because it appears to me it bears the closest relationship in this particular case.

Q. Yes, I understand it reflects your honest judgment about it, and I am questioning that judgment, but not in any way reflecting on the efforts that you made to get at a proper basis.

A. The reason I suggested that, Mr. Coates, was because in your questioning you were asking me what would happen if certain conditions held.

Q. I am leading up to a more direct question.

A. All right, I will wait for it.

Q. All right. Now, that allocated expense would not vary appreciably as between a situation where the utility was there ready to serve, but getting no gross revenues, and where it was serving a substantial amount of gas and getting a substantial amount of revenue, would it?

[fol. 1554] A. Are you speaking of the general expense?

Q. I am speaking of what we have styled the allocated expense.

A. Let us talk about one of them at a time. I would understand more about it.

Q. Well, if the utility were there ready to serve, but not serving an M. C. F. of gas I believe you have already stated that the transmission and maintenance expense would go on just the same?

A. Some of it would.

Q. I understood you to say that it would go on in about the same per cent.

A. There might be some increase if they started putting gas through the line. Generally the expense would not be materially more if they were actually putting gas through than if they were ready to put it through.

Q. If the utility were there to serve with a full personnel and ready to turn a valve and deliver gas at any minute it was wanted, but stood there an appreciable time without selling any gas or getting a dollar of revenue, would those general expenses vary to any particular extent?

A. Well, if they were serving no gas they would not have to read any meters.

Q. We are talking about transmission expense and not distribution.

A. Well, there would be no billing, and would be very [fol. 1555] little occasion for any accounting except in connection with the physical properties which would be construction overheads.

Commissioner Thompson: You would not have any rate case in that instance, would you, Mr. Lewis?

A. I hardly think so.

Mr. Bobbitt: As a matter of fact, has that ever happened; isn't that the purest assumption, and an assumption of fact that will probably never exist?

Mr. Coates: I am getting at the relative application of these two methods of apportionment, and that is about the only way I know to illustrate it.

Commissioner Thompson: Go right ahead.

By Mr. Coates:

Q. Now, as I understand you, generally speaking, the allocated expense, that is, the general expense, and the transmission system operations, and maintenance do not vary materially in proportion to the M. C. F. deliveries, or the proportion of revenues obtained from the sale of gas?

A. Generally speaking, they do not, but in the instant case they do vary surprisingly close to the deliveries of gas.

Q. And on the other hand, Mr. Womack has used in this case, as has already been testified to, first the lineal miles of line in the Laredo section as compared to the lineal miles of line in the section from Jennings Field to Roma?

A. That was my understanding of his allocation.

[fol. 1556] Q. And the transmission; that is, the general organization that would have to handle this property, would vary in some appreciable extent in accordance with the lineal miles of line?

A. It would be affected to a certain extent.

Q. Now, the lineal miles of line in the Laredo section are obviously much greater than the lineal miles of line from the Jennings Field to Roma?

A. I do not know those exact distances, Mr. Coates, but I believe there is more lineal miles in the Laredo district.

Q. And, on the other hand, the line from Jennings Field to Roma is much larger in capacity than the average line in the Laredo area?

A. That is my understanding, but, as I stated, I do not know the size or length of those lines.

Q. And, for instance, the number of line walkers, and so forth, you would have to have on a line would vary in proportion to the lineal miles of line, wouldn't it?

A. That is correct.

Q. And, on the other hand, your general maintenance, that is, the cost of your general maintenance on a line,

would vary in proportion both to the lineal mile of line, and the capacity of that line?

A. I do not believe they vary in proportion. They might be influenced by the size and length of the lines, but if you [fol. 1557] had a stated system of a certain size and length, if there were no other factors to consider, your maintenance cost would be the same exactly each year because you have the same system.

Q. But if you have to make repairs, and so on, on Dresser couplings on a 12 inch line, that costs considerably more than a Dresser coupling on a 6 inch line?

A. It would cost more. I do not know whether it would be in proportion to the diameter of the pipe or not.

Q. But the diameter of the pipe would be a material factor in that?

A. I am sure it would.

Q. And a big Dresser coupling would cost more than a little Dresser coupling?

A. I am sure that it would.

Q. And it is those factors, and those variances which you understand Mr. Womack has undertaken to take care of on his factors of lineal and equivalent 3 inch miles?

A. I understand that was his reason for using those per cents. You were speaking of the maintenance expense; now, take a Dresser coupling, there is the expense of hauling that coupling to the place where it was put in, and the labor of the man putting it in, and that time would not be influenced by the item of lineal miles, or the time to put it in.

[fol. 1558] Q. If you had to haul out a big Dresser coupling it would cost more than to haul little ones?

A. It would not be in direct ratio to the size of the pipe.

Q. I understand you to say you have made some studies to show those variances; have you taken into consideration the fact that the Roma line was installed about 1929?

A. Yes, I considered that.

Q. And you would expect that on a new line your maintenance during the first years would be relatively low compared to what it would be in subsequent years?

A. That is correct.

Q. And whereas I think this record amply reflects that the lines in the Laredo section have gotten further along so fan as maintenance is concerned, than the Roma line?

A. That is correct.

Q. Do you attempt to compare the maintenance costs on the Roma line with the Laredo section lines?

A. I had no way of making such comparison because of the fact that the books do not show direct charges for operations, and maintenance, and I did not have time to make such a break down.

Q. Then your apportionment has not been built up on a study of the comparative maintenance between the Laredo section and the Monterrey section?

A. My study has been made on the South Texas Gas [fol. 1559] Company as a whole in determin-g what factors were most closely related.

Q. Now, as I understand it, one of your eliminations from the operating expense of South Texas Gas Company has been the elimination of a certain pipe line rental on the 10 inch line by Jim Hogg Junction down to the Jennings Field?

A. That is correct.

Q. And you have entirely eliminated that from your operating expenses shown in all of your exhibits, have you?

A. Yes, I stated yesterday that that properly should have been left in, and shown as direct to the Monterrey line, but for the purpose of convenience I eliminated it entirely because I considered it had no application to the City of Laredo.

Q. And upon what information was your judgment in that regard based?

A. Well, in the first place in conference with the officials in Houston, and I believe you were present at that time, for, quite a long while I could not even find out where the rented line was.

Q. Didn't you get the impression that we did not know?

A. I do not believe you did know.

Q. I don't believe so either.

A. I know it took me some months to find out where that line was, and when I got a copy of the contract it showed a very vague description, and said it was in Jim Hogg, and [fol. 1560] Zapata Counties, but we did determine the line in green and red checks on this map was the line in question. At the time of the conference I was informed that no gas from that field had come to Laredo, and my analysis of the invoices for the periods that I have my examination did not disclose that any gas delivered in that field

was billed by the South Texas Production Company to the Laredo line. It has all been billed to the Monterrey line, and all the evidence I had pointed to the fact that that line had never been used for serving Laredo, and that was the reason I eliminated it in my set up.

Q. At the conference in Houston weren't you told, in the light of the limited knowledge we had of the situation at that time, that it was probably a standby line for service to Laredo in case of an emergency, and that was about the only reason we could give.

A. I was told that, and also that it probably ranged in length from 5 miles to 75 miles.

Q. I do not believe that is quite the lengths that they gave.

A. I had so many vague reports and no concrete evidence of what it was that it was a little hard to determine.

Q. That was on the occasion of your first investigation of the books?

A. Yes, and as I stated, sometime after that I was furnished with a copy of a contract stating that, I believe, it [fol. 1561] was 12 or 15 miles of pipe line in Jim Hogg and Zapata Counties, so we finally decided that was the line in question.

Q. And I believe that was on the occasion of your first visit to Houston?

A. Yes, it was.

Q. And shortly after the present management of the company had taken over its operations, wasn't it?

A. I believe they had been in there something over a year.

Q. Yes, and you conferred with me and Mr. Strange.

Mr. Lange: I do not believe it is in the record what they mean by "present management". Is that different personnel of the same corporation, or what is referred to by the term "present management"?

Mr. Coates: I think you know, Mr. Lange, this property is now under what is known as Electric Bond and Share management, with practically complete new personnel.

Mr. Lange: Since when? We are not definitely informed about that. We do know there was a corporate entity of Texas Border Gas Company and South Texas Gas Company that took over these properties in 1928, in April, and that corporate entity continues, so far as we know.

Mr. Coates: In all my conversations with you I thought you understood that.

Mr. Lange: So far as the record shows, I believe it is still shown that Texas Border Gas Company and South [fol. 1562] Texas Gas Company are definite corporate entities. It is our understanding that these two entities operated these properties beginning April, 1928.

By Mr. Coates:

Q. All right, Mr. Lewis, now if it should appear that that 12 miles of 10 inch coming down from the Jim Hogg Junction to the Jennings Field was actually used as a standby line, and I mean by "used", that in times of emergency gas was actually gotten through that line for service into Laredo, wouldn't you reconsider the inclusion or the exclusion of that pipe line rental charge?

A. A lot would depend, Mr. Coates, on the conditions under which it was used, and other connections. I am not familiar enough with the physical connections up in the Carolina-Tex field, for instance; I do not know what other sources of supply you have, you know.

Q. You do not question the propriety of a reasonable amount of standby equipment for times of emergency?

Mr. Lange: Isn't that a question for an operating engineer, and not an accountant?

Mr. Coates: He has exercised his judgment in cutting this out.

Commissioner Thompson: The question is proper, as it stands now it looks like it is very properly taken off.

Mr. Coates: As it now stands.

Commissioner Thompson: That is what I said, as it now [fol. 1563] stands.

A. What was the question, Mr. Beck?

(Reporter reads question to witness.)

A. I will say this, Mr. Coates, that I do not know the potential supply of gas in the west Jennings Field, and neither do I know the potential supply of gas in the Carolina-Tex Field, but from the invoices I have seen for the year ended July 31, 1932, there was only one time that gas was taken from the west Jennings Field, marked "Cuellar Camp", on that map.

Mr. Lange: The Commission understands that this is part of the field (indicating on plat).

A. There has been a considerable amount of that gas from that field taken to the Monterrey line. Now, it is my belief that with the Carolina-Tex Field, and, as I said, I am not qualified to testify as to gas reserve, but I am testifying only to the use to which the lines have been put, but I believe there is sufficient gas from my study of the records in the west Jennings Field, and the Carolina-Tex Field to take care of the situation.

Commissioner Thompson: What do you base that on?

A. By virtue of the fact that during the last year there was delivered from the west Jennings Field to Laredo according to the invoices only one delivery of gas which was in August of 1931, and since that time there has been some [fol. 1564] large volume of gas taken from the west Jennings Field to Monterrey. That gas, in case of emergency, could have come to Laredo, and from all appearances that field alone could at this time supply Laredo, and from all indications from the company's books the Carolina-Tex Field could.

Commissioner Thompson: Is it your idea that gas reserves are based on past performance?

A. I know nothing about the gas reserve, but only my study of the books of the company. The entire line from Pescadito to Jennings has been allocated to the Laredo division, and it has not been used to any great extent during the past year, and because of that investment, and the investment in the Carolina-Tex Field, I believe that is sufficient for standby equipment. I do not pretend to know anything about the gas reserve, or how long the gas will last, and I am testifying with those qualifications.

Commissioner Thompson: That point is not in question at all because they are buying the gas.

By Mr. Coates:

Q. My question was perhaps more or less general, but ordinarily in your accounting work and in accordance with correct accounting practice, where you know all of the facts, you do not question the propriety of a reasonable amount of expense for a reasonable amount of standby equipment?

A. As I stated before, I cut that out of the operating [fol. 1565] expense for my own convenience. I am not

questioning that it is a justifiable expense for South Texas Gas Company, but I believe it should be considered as part of the Monterrey line, or as standby equipment for that line, and not Laredo.

Q. And that no charge for that part of the investment should be charged against Laredo?

A. That is my opinion.

Q. Mr. Lewis, from your examination of the records for the purpose of ascertaining whether any deliveries were made to Laredo from east Jennings Field or not, did you make any examination of the primary records in the measurement department?

A. As I stated, all the records I examined in that connection were the invoices from South Texas Production Company to South Texas Gas Company, billing them for the gas, stating the wells it came from, and to what lines it was delivered.

Q. Those were simply what are termed, I believe, intercompany invoices?

A. Yes.

Q. And you did not make any examination of the records in the measurement department of the United?

A. No sir, I did not check any meter readings or compute any gas or pressure basis at all, but accepted the invoices. [fol. 1566] Q. Now, you likewise wholly excluded from the operating expense of South Texas Gas Company any gathering line charge in the Carolina-Tex Filed, didn't you?

A. Yes.

Q. Why did you do that?

A. That is a long history. When the companies were organized, or when South Texas acquired control in 1928, they entered into a contract with South Texas Production Company to take all of the gas that they needed at a rate of 8 cents per thousand cubic feet for industrial gas, and 13 cents per thousand cubic feet for domestic gas, and that contract was later amended specifying that all gas deliveries should be billed at 5 cents per thousand cubic feet.

Q. That is, South Texas Production Company to South Texas Gas Company?

A. That is correct. That amended contract is still in existence, and still operative between the two companies. At the time the Jennings line from Jennings to Roma was built, I presume in 1929, because they started operating it

at the end of that year, they entered into a further contract with the Southern Gas Company to take gas at a rate of 6 cents per thousand cubic feet, and providing for the 1 cent gathering charge from wells controlled by the South Texas Gas Company, I believe.

Q. One cent gathering charge for the Carolina-Tex Field?

A. I do not know whether the contract specified the field [fol. 1567] or not, but that contract has been introduced into the record, I believe, and I do not recall exactly about that.

Mr. Lange: For the Commissioner's information, that contract was introduced at the time the Commissioner was not here.

Commissioner Thompson: I have read the record.

A. Now, at that time, or prior to that time, the South Texas Production Company had been delivering gas in the Carolina-Tex Field to the South Texas Gas Company at the contract rate, and when that contract was entered into the gas in that field was billed from the Southern Gas Company to South Texas Gas Company at 6 cents. That continued until February, 1931, I believe, at which time all gas was billed through the South Texas Production Company, including deliveries from the same field instead of being delivered from the Southern Gas Company at 6 cents, was billed from the South Texas Gas Company at 5 cents, and the 1 cent gethering line charge was paid to the Southern Gas Company.

Q. Well, do you know whether or not at the time gas was being taken from the wells of the Southern Gas Company in the Carolina-Tex Field, that the South Texas Production Company wells in that field had either failed or were practically in a failing condition?

A. No, I do not know anything about the gas reserves.

Q. And do you know whether, since that time, the South- [fol. 1568] ern Gas Company wells which went on the line after the South Texas Production Company wells were taken off, have likewise failed?

A. I am sure it is not the same group of wells that was there in 1928.

Q. And that since that time the wells which have been supplying gas from the Carolina-Tex Filed are South Texas Production Company wells, meaning either wells which the South Texas Production Company owns, or wells of other

people in that field from whom the South Texas Production Company purchases gas?

A. I do not know the ownership of the wells.

Q. But the records do show that no gas has been purchased from the Southern Gas Company in the Carolina-Tex Filed since sometime in 1930, do they not?

A. In February, 1931, I believe.

Q. Since February, 1931?

A. That gas was coming from the same wells in January, for illustration, 1931, when that gas was billed from the South Texas Production Company, and in February, 1931, the same deliveries were billed through—no, I think I went haywire on that.

Q. I am afraid you did, and if you do not know——

A. I do know, but I got twisted up in my case.

Q. But the deliveries for the accounting period ending [fol. 1569] July 31, 1932, have been from wells of the South Texas Production Company in the Carolina-Tex Field?

A. I do not know who owns the wells, but South Texas Production Company has been credited with the gas.

Q. And it is your understanding that the gathering lines in the Carolina-Tex Field are owned by the Southern Gas Company, and are not owned by the South Texas Gas Company, nor included in this appraisal?

A. That is my understanding.

Mr. Lange: They were originally, and have been subsequently deducted.

Mr. Coates: That is something, Mr. Lange, about which you do not know.

Mr. Lange: I am taking the book's explanation.

A. Let me make another explanation as to the elimination of that charge, Mr. Coates. As I stated, prior to the time the Monterrey line came into existence that charge was not in effect either directly or indirectly, and it appears it was the gas they needed for the Monterrey line which made it necessary for them to enter into the contract with Southern Gas Company. Now, at the present time, the Monterrey line is taking practically the same amount of gas from this east Jennings Filed to Monterrey as the South Texas Gas Company is taking from the Carolina-Tex Field. In other words, the gathering system in the west Jennings Field, [fol. 1570] which is included in the appraisal 100 per cent to the Laredo district——

Q. No sir, it is 30 per cent.

A. No, in the west Jennings Field it is 100 per cent, is it not, around Cuellar Camp?

Q. The wells which are connected with the line which leads to Laredo, there are a number of wells in that field, and certain of them are connected so as to serve Laredo, and certain of those wells south of the junction point are connected with the line to Monterrey.

A. I am speaking of the wells west of this connection.

Q. Certain gathering lines are included because they do serve Laredo, and others are not because they serve Monterrey?

A. That section of the transmission line on the lower end of the line is also used for transporting gas to Monterrey. That is the gas that comes from Cuellar No. 1, not only utilizes the South Texas gathering system line there, but they also utilize a section of that transmission line, I understand, about 20,000 feet. Now, it occurs to me that inasmuch as that gathering charge was not in effect until the Monterrey line came into existence, it was needed for that purpose, and if we are to charge them with that gathering charge in the Carolina-Tex Field we should credit them with that gathering charge on the Jennings Field.

[fols. 1571-1579] Q. We will have an operating man on the stand who knows about those connections, and what wells serve what property.

Commissioner Thompson: As a proper accounting proposition, Mr. Lewis, is it your idea that this rental charge should be eliminated, based on the fact that there had been no rental charge until the Monterrey line came into existence?

A. That was one reason, and another was that certain South Texas gas properties are utilized for taking gas to Monterrey now.

Q. And that is the basis for your action in that respect?

A. That is one of the reasons. I think I have covered all of them.

• • • • • • •

[fol. 1580] Q. Now, in connection with Exhibit "L", and in connection with the Texas Border Gas Company statement of earnings shown on pages 6, 7, 8 and 9, you show as the second column on page 9, purporting to be the statement

of earnings for the year ended July 31, 1932, the apportionment of certain expenses to merchandise and jobbing?

A. That is correct.

Q. And included in that an apportionment of certain general expenses?

A. That's right.

Q. Now, is that in accordance with the books of the company?

A. The items shown as merchandise and jobbing expense is in accordance with the company's books.

Q. Is the item of general expense which you show under merchandise and jobbing in accordance with the company's books?

A. No, that is my allocation of the general expense.

Q. That is your allocation of an additional amount of general expense to merchandise and jobbing?

[fol. 1581] A. That is correct.

Q. Which you took out of other accounts and put under merchandise and jobbing?

A. It decreased the percentages that would go in the other columns.

Q. Now, other than the expense which you have taken out and shown here on the second column of page 9, there is other expense and other general expense charged to merchandise and jobbing?

A. I did not understand the question.

Q. I say the expense that you have shown in the second column on page 9 of Exhibit "L" is not the only general expense of the company charged to merchandise and jobbing?

A. You mean on the company books?

Q. Yes, on the company books.

A. You are referring to the item of $15,670.82?

Q. No, I am directing your attention to this: The company sets up on its books under merchandise and jobbing certain expense charges, doesn't it?

A. That is correct.

Q. Now, the charges of $804.90 and $563.95 are not charged to merchandise and jobbing on the company's books, are they?

A. They are not.

Q. But there is charged to merchandise and jobbing on the company's books other general expense in addition to [fol. 1582] and over and above this $804.90 and $563.95?

A. There may be some included in the $15,000 item. I will have to look. Yes, the company has charged to merchandise and jobbing under general expense the sum of $83.72, which is included in the $15,000 item.

Q. Do you know whether or not in addition to the general expense, or rather, in addition to the local expense charged to merchandise and jobbing, the company has made studies for the purpose of ascertaining the amount or what amount of general expense is allocable to merchandise and jobbing?

A. I presume they have made such studies.

Q. And the charges of general expense which it makes to merchandise and jobbing are in accordance with the charges as made by the company?

A. I will say this in that connection, Mr. Coates, that there is no uniformity in that charge. One month an employee might be paid, charged to Customers Expense, and the next month to Merchandise and Jobbing, and it would be hard to determine from their books just what their policy was. They have so many changes in that connection.

Q. Now, that $83.00 does not include District General Expense, does it?

A. I do not know what it includes. I am inclined to believe that is possibly insurance. It was an amount cleared from a clearing account.

[fol. 1583] Q. But you are unable at this time to say whether it includes district generally?

A. I don't think it does.

Q. And you know that there is some district general expense included in merchandise and jobbing expense; do you not?

A. No, I do not know that there is.

Q. Are you able to find out from looking at your working papers?

A. I think I can.

Q. Please do so.

A. Define the term "District general expense"; do you mean by that expense that was cleared from the district clearing account?

Q. And denominated general expense.

A. I do not find any district expense cleared from the district expense clearing account.

Q. And it is your testimony that no such expense is cleared?

A. If I understand your term of district expense, that is my testimony.

Q. But to the extent that you have taken this $804.90, and $563.95 from some other account, and put it under the head of Merchandise and Jobbing, you have varied from the definition of these accounts and charges and expenses as carried by the books of the company, have you not?

A. Yes, and no. In this exhibit I have taken the figures [fol. 1584] on the books of the company as adjusted by me and taken the adjustments I gave you last night, and all these columns to the right are columns of allocation, and you can see I have allocated those amounts to merchandise and jobbing.

Q. Which, on the books of the company and according to the charges allocated by the company, were not allocated to merchandise and jobbing?

A. They were not.

Q. And in that way and to that extent you have substituted your discretion and judgment about it for the discretion and judgment of the officials of the company?

A. It is my opinion that it is a proper allocation in view of the fact that very small amounts of general expense have been charged.

Q. And that represents your judgment about how these expenses ought to be charged, but does not reflect the judgment of the company as reflected by the books?

A. That reflects and represents my judgment. That is all on the books of the company, and I have allocated those amounts to merchandise and jobbing.

Whereupon a recess was taken at 12:00 noon until 2:00 o'clock P. M.

[fol. 1585] Afternoon Session

Mr. Coates: Before noon I made a statement that I now find to be erroneous. The statement was that the wells in the west Jennings Field that were hooked up to serve the Monterrey line going to Roma were all either below the junction point or else connected below the junction point. I asked somebody about that about six months ago, or sometime while we were preparing for the case, and was informed that that was the situation, and that the wells above the junction point were hooked up for service to

Laredo, although you could open a valve and run gas back the other way. I now find that at the present time some of the wells above the junction point at the point marked "Jennings Junction" are serving gas to the Monterrey line. How long that has been going on I do not know.

Mr. Langé: You mean in the west Jennings Field?

Mr. Coates: Yes. I made that statement in the record, and it is wrong.

Commissioner Thompson: That is in conformity with Mr. Lewis' statement?

Mr. Coates: Yes, Mr. Lewis stated there were some wells above that junction point, and I told the Commission that the wells connected above the connection point were not hooked up the serve the Monterrey line, but I am wrong [fols. 1586-1588] about it.

Commissioner Thompson: We are glad to have your statement. Proceed with the cross-examination.

* * * * * * *

[fol. 1589] Q. Mr. Lewis, you were asked with reference to your method of allocation, and in connection with that I will ask you what you found as to your study of the relation between the volume of gas and the operating expenses?

A. That is on the South Texas Gas Company?

[fol. 1590] Q. Yes.

A. I have made a study of the relation between the volume of gas deliveries, and the operating expense of the transmission system for the period April, 1928, up to July, 1932, to determine the unit costs of transporting the gas and from the period from April 10, 1928, to December 31, 1928, there was delivered 882,716 M. cubic feet; the operating expense, for that period, that is the transmission system operating expense, was $4029.93, which results in a unit cost of .4565 cents; for the year 1929 there was delivered the amount of 1,321,888 M. cubic feet of gas. The transmission system operating expense was $6233.18, or a unit cost of .4715 cents. For the year 1930, and I might explain that 1930 is the year that the Roma line began operations, when the volume practically doubled that year, or a little more than doubled, there was transported 2,856,452 M. cubic feet of gas. The transmission system operating expense was $20,-219.78, or a unit cost of .7079 cents. For the year 1931 there was transported and delivered 2,706,030 M. cubic feet of gas. Transmission system operating expense was $19,-

282.40, resulting in a unit cost of .7126 cents. For the year ended July 31, 1932, there was transported 2,335,075 M. cubic feet, and the transmission system operating expense was $16,504.16, or a unit cost of .7068 cents. You will observe from those figures that in the year 1930, when [fol. 1591] the volume practically doubled, or a little more than doubled, that the unit cost instead of decreasing shows an increase from .4715 to .7079, and except for that change there is very little difference in the unit cost. I might also add that the gathering line charge of $13,800.00 per year has been eliminated from these operating expenses, and the gathering charge also has been eliminated in stating the operating costs.

In the case of maintenance I will just give the unit costs from April 10, 1928, up to December 31, 1928, which was .4813 cents. For the year 1929 it was .2914 cents; for 1930, .3162 cents; for 1931 it was .3809 cents, and for the year ended July 31, 1932, it was .3922 cents. I made that study in seeking some relation for the purpose of allocation of expenses, and I found that was the closest relationship I could find.

* * * * * * *

[fol. 1592] Q. Turning to page 11 of Exhibit "L", the questionable items, South Texas Gas Company, the summary and the summary on page 12 of the same exhibit; just turn to page 12 first. Now, for the year ended June 30, 1929, the item of management fees is reflected under general expense, and the amount allocated to Laredo is $5102.95. Did you have a break down of that item for that year?

A. No, there is not any break down. That represents a management fee paid to the operating company under a contract.

Q. Do you know what operating company?

A. I believe the United Gas Company, at that time.

Mr. Coates: Is that the full name or the correct name?

A. I don't know whether it was at that time or not. They have changed their names of the operating companies quite frequently, and I do not know. The contract for this management fee was with the United Gas Company providing for a management fee of 2 and one-half per cent of [fol. 1593] gross revenues. I do not know when United

Gas Public Service Company came into existence, but that 2 and one-half cents contract was in effect until June, 1930.

By Mr. Lange:

Q. Two and one-half per cent of the gross revenues?

A. Yes.

Q. How long was that contract in effect; was that in effect the succeeding year ending June 30, 1930?

A. Yes. It might have terminated in May, 1930. I do not believe in the month of June, 1930, it was operative.

Q. Did your audit show what officers of this company participated in that total sum insofar as their salaries were concerned?

A. I do not know where that money finally went. It was paid in this case by the Texas Border Gas Company to the United Gas Company, and as to the disposition that was made of the amount I am not prepared to testify.

Q. You don't know among how many officials of the company that was prorated?

A. I do not suppose the officials of the company got that. It would go into the revenues of the company.

Q. And then prorated back to each company?

A. There was no proration back so far as I know.

Q. Was it charged back on the basis of the percentage that you just stated?

[fol. 1594] A. I do not believe we understand each other, Mr. Lange.

Q. You said that the amount of $5102.95 was based on a certain per cent of the revenues?

A. No, it is $7075.64 that is based on the gross revenue, and I have allocated 72 per cent of that to Laredo, so that in the prior pages the item of $5102.95 is shown as allocated to the City of Laredo.

Q. And that per cent you think is carried through the year ending June 30, 1930?

A. I can tell you the exact date that contract terminated, either in May or June, 1930, and I believe it was the first of June, 1930.

Q. On what basis were the management fees calculated for the year of June 30, 1931, as appearing on page 12 of the exhibit, the item $2020.56?

A. About that time these companies went under the management of the Electric Bond and Share Company, and

that original contract was cancelled, and a new contract entered into whereby the United Gas Company or the operating company of the group, whatever it was at that time, would prorate to its subsidiary companies the management fee charged to it by the Electric Bond and Share Company on the basis of the revenues of the various companies.

Q. In other words, the larger the amount of the gross revenue realized by any particular company, the manage-
[fol. 1595] ment fee charged to that particular company would be increased proportionately?

A. Well, it would bear that part of the management fee which its gross revenues bore to the gross revenues of the entire group so that if its gross revenues went up and the others remained the same it would increase the proportion that particular company would get.

Q. In other words, based purely on the gross revenues; if the net revenues in any particular period might have been reduced to a minimum, and yet the gross revenues mounted, the management fees would mount with it; that is, the proportionate part that particular company would bear; in other words, the net revenue had no bearing on that management fee that company would bear?

A. No sir.

Q. The net revenue could go down, but if the gross revenues were up the management fee went up?

A. According to the contract the management fee is prorated on the basis of gross revenues. I might add that I have not checked any of the computations of the management fee.

Q. But that is the basis stated in the contract?

A. Yes.

Q. For the year ending July 31, 1932, the management fee is also shown on page 12, $1785.98, of which $1288.94 was allocated to Laredo; on what basis was that figure arrived at?

[fol. 1596] A. That is on the same basis.

Q. Gross revenue?

A. Yes.

Q. Was that same percentage used insofar as both companies were concerned; that is, both the South Texas Gas Company and Texas Border Gas Company?

A. It would not be the same percentage, but it would be the same method.

Q. Turning to page 11 of the exhibit, South Texas Gas Company, for the year ending June 30, 1929, the management fees reflect a total of $3178.98, of which 80.32 per cent is allocated to Laredo, amounting to a total of $2553.32. Is that management fee apportioned to the South Texas Gas Company on the basis of gross revenue?

A. No, that amount comes under the former contract, and was computed on the basis of 2 and one-half per cent of the gross revenues. It is a charge direct from the United Gas Company.

Q. And the same for the year ending June 30, 1930?

A. Yes, with the possible exception of the month of June. I am not sure which of those two months that old contract expired.

Q. And for the year ending June 30, 1931.

A. That amount is computed in the same way I stated in the case of Texas Border Gas Company. It is a pro-[fol. 1597] portion of the management fee charged by Electric Bond and Share Company which the South Texas Gas Company revenues would bear to the total gross revenues of the United group.

Q. And that also obtains for the year ending July 31, 1932?

A. That is right.

* * * * * * *

By Mr. Lange:

Q. What was the rate of depreciation set up by South Texas Gas Company's books as of April 10, 1928?

[fols. 1598-1600] A. What was the rate set up at that date?

Q. Yes.

A. I don't know.

Q. For that year.

A. You mean for the year?

Q. For the period.

A. For the period April 10, 1928, to December 31, 1928?

Q. Yes.

Mr. Coates: Hasn't that been given before; hasn't that already been gone over, Mr. Lange?

Mr. Lange: Not as far back as April, 1928, I don't believe.

Mr. Coates: All right.

A. The Texas Border Gas Company for that period computed depreciation at the rate of 2 per cent on the depreciable properties.

Q. For the distribution system; what did the South Texas Gas Company do?

A. They used a rate of 3 and three-fourths per cent.

. . . . . .

[fol. 1601] Testimony of W. W. Stein

Direct examination.

By Mr. Lange:

Q. Will you please state your name.

A. W. W. Stein.

Q. Where do you live, Mr. Stein?

A. Laredo.

Q. What is your present occupation?

A. District manager for United Gas Public Service Company.

Q. How long have you been connected with the gas company serving Laredo in number of years, approximately?

A. I began with the Border Gas Company on the 18th of October, 1910.

Q. Mr. Stein, you are familiar with the manner in which the rate payers are billed for gas used in Laredo at this time, or rather, for the period ending July 31, 1932?

A. I think so.

Q. With reference to bills being all set out at one particular day in the month, or at various times, will you please explain the manner in which bills are set out in Laredo to rate payers for gas used by them?

A. As of the year ending July 31, 1932?

Q. Yes.

A. I do not know how it was handled at the beginning of the year.

Q. Which year.

[fol. 1602] A. This year. I was gone from January 1, 1931, until about the 6th of June of this year. I know how it was handled in July.

Q. How was it handled in July?

A. The meters were read, what I would call continuously or practically daily, and about five days after the meters are read bills are prepared and mailed to the customers. Bills are mailed out usually from the first until the 26th of the month. Very few bills are mailed out between the 26th and the first.

Q. Those bills cover gas purchased for what previous period? Say, a bill is mailed on the first of the month, it covers purchases of gas for what period prior to them?

A. The bills mailed on the first of June would probably cover gas purchases from the 25th day of the previous month. Bills mailed on the first of October would be for gas used from the 24th of August until the 24th of September.

Q. Now, what I want particularly to know, you say bills are mailed out continuously from about the 1st to the 25th or 26th of the month?

A. Yes.

Q. Bills mailed out on the first are payable 10 days after that, or how soon after that?

A. It would be approximately 10 days.

Q. And bills mailed out on the 2nd would be one day more, [fols. 1603-1682] and so on down?

A. Yes.

Q. Now, what was the practice of the company in July with reference to requiring meter deposits?

A. Deposits were required since I have been there in practically all cases except where the credit of a person is definitely established by previous records.

Q. Is there any particular minimum amount of deposit; is there any standard amount or does it vary?

A. Yes, it varies. Normally for resident purposes it is a nominal amount of $5.00 which is required, but in the case of restaurants or other classes of customers that use more than the $5.00 worth of gas in 60 days, an estimate is made of the amount they would probably use, and a deposit is asked for.

Q. In other words, larger users are required to make larger deposits?

A. Yes.

Q. To cover what you would currently estimate to be about a 60 day volume of gas in dollars?

A. Yes. It does not always happen, of course, that way.

Q. But that is the purpose of requiring the deposit?
A. Yes.

. . . . . .

[fol. 1683] Mr. Coates: Why not let the record show that Mr. Elrod was offered, and that we objected on the same grounds as we have objected before, and that the objection was noted, and that the Commission would let him testify as to the particular amount which he believed would be sufficient for a return upon the fair value of the plant and property of these companies, and also that 2 per cent, in his judgment, per annum, was sufficient for depreciation, and for all other items of depreciation reserve, or retirement accounts.

Mr. Lange: We believe Mr. Elrod should briefly give his testimony on that.

Mr. Coates: We would agree that that is what he would testify.

. . . . . .

[fol. 1684] Mr. Lange: He was going to testify in connection with the rate of depreciation as applicable to the properties, and that would be his calculation also, as to what he would consider a fair rate of return on the investment.

Commissioner Thompson: What would that be?

Mr. Lange: 7 per cent. Of course if he is not permitted to testify, or prepare an exhibit and submit, if the Commission thinks the record reflects that——

Commissioner Thompson: That you are going to call 7 per cent fair?

[fols. 1685-1691] Mr. Lange: Yes sir. Of course we do not want to prolong this hearing any more than counsel for the gas company does. We are the ones who are going to shoulder the burden of this expense, although we do not concede that fact entirely.

Commissioner Thompson: And that his testimony would be to the effect that he considers 7 per cent a fair return on the property?

Mr. Lange: Yes sir.

Mr. Coates: And all that would go in subject to our objection as to his competency?

. . . . . .

[fol. 1692] Q. Mr. Stein, did you have anything to do with negotiating the contract which has been introduced in evidence here between the South Texas Gas Company and [fol. 1693] Southern Gas Company relating to the gathering lines in the Carolina-Texas Field?

A. I did.

Q. Were you the man in charge of those negotiations for South Texas Gas Company?

A. I was.

Q. And who was in charge of the negotiations for the Southern Gas Company?

A. Mr. L. A. Nordan.

Q. And will you state what the situation was that led to the making of that contract?

A. The South Texas Gas Company and the South Texas Production Company had some purchase contracts in the Carolina-Tex Field with wells that were becoming depleted rather rapidly.

Q. By that do you mean wells owned by other parties, and purchase contracts for the purchase of gas at the mouth of the well?

A. Yes, the Southern Gas Company had some wells up in the northern part of the field.

Q. The northern part of the Carolina-Tex Field?

A. That is right, and I tried to get an additional supply, and knowing that the Southern Gas Company was not taking any gas out of the field at that time, I tried to see if some arrangement could be made to connect up the wells that the Southern Gas Company had with our line.

Q. And by "our line", you mean the South Texas line? [fol. 1694] A. Yes.

Q. All right, go ahead.

A. I first talked of buying the gathering system that the Southern had.

Q. That is the gathering system in the Carolina-Texas Field?

A. Yes.

Q. Now, was that gathering system at that time identical with the gathering system that exists there now?

A. No, there was some slight changes made later.

Q. All right, sir.

A. I was told that the gathering system could not be sold very readily, and in the course of the discussion it was thought best to make some arrangement to have the South-

ern Gas Company continue to purchase the gas from the wells, and charge the South Texas Gas Company for gathering the gas.

Q. In other words, you went over there; your negotiations started in with South Texas Gas Company attempting to purchase that gathering system, and you ended up with an agreement to rent the gathering system and pay a gathering charge?

A. That's right.

Q. All right, go ahead.

A. After that we finally reached an agreement as to what the gathering charge would be.

Q. And what was that agreement?

A. One cent per thousand cubic feet.

[fols. 1695-1698] Q. Now, was that contract negotiated entirely; that is, were the negotiations entirely between you and Mr. Nordan, you representing South Texas and Mr. Nordan representing the Southern?

A. Yes.

Q. And does the contract as written up and introduced in evidence here reflect the trade that you two gentlemen made?

A. Yes, that's right.

Q. I may be anticipating some cross examination, but the record reflects that the South Texas and the Southern were at that time under the same substantial stock ownership?

A. We were a part of the Moody-Seagraves interests.

* * * * * * *

[fol. 1699] Cross-examination.

By Mr. Bobbitt:

Q. Mr. Stein, at the time this hard and fast trading you were speaking of was going on Moody-Seagraves owned the whole outfit; they owned South Texas Gas Company?

A. It was under the Moody-Seagraves interests.

[fols. 1700-1703] Q. They owned it, didn't they?

A. It was owned by United Gas Company.

Q. Did Moody-Seagraves control it?

A. Yes.

Q. Moody-Seagraves also controlled the Southern?

A. Yes.

Q. And Moody-Seagraves controlled the whole works?
A. That's right.
Q. And South Texas Gas Company and Texas Border Gas Company and the Southern, you might say, were side-shows; they were subsidiary companies of Moody-Seagraves?
A. They were subsidiary companies.
Q. And when one of you fellows were trading with one subsidiary for another subsidiary you were working for the same boss?
A. Yes, but each of us were held responsible for the particular property under our charge?
Q. You were each held responsible for the particular property under your charge, but after all the profit, if any, and the benefit, if any, went into the same pocket?
A. I do not know where they went.
Q. Well, they went into the owning concern, didn't they?
A. Yes, the holding company, I suppose.

. . . . . .

[fol. 1704] Q. Now, you testified, I believe, and if not I will stand corrected, the first question with reference to when the Jennings line tied in was made with the checkered line and the Roma line, and I think your answer was that the tie-in was made to serve the Roma-Monterrey line with gas; isn't that what your answer was to the first question directed to you with reference to when or why the tie-in was made to the Jennings Junction-Monterrey line?
A. Do you mind reading the question?

(Reporter repeats question to witness.)

Mr. Coates: Do you remember what you said?

Q. I want to know that. If the stenographer will check that answer. I believe that is what the answer was, that that is the reason why it was made; that was his first answer.
A. My recollection of it was that the tie-in was made between Jennings Junction and Jim Hogg Junction at the time the Monterrey line was built, or shortly afterwards.
[fol. 1705] Q. At the time the Monterrey line was built?
A. Or shortly afterwards.
Q. To supply the Monterrey line with gas?

A. To bring gas into this line into Laredo and into the Jennings Field. If I did not say it, that is what I should have said.

Commissioner Thompson: The record shows that he said it was made to supply Laredo with gas.

Mr. Lange: I think the first answer was just the other way around.

Commissioner Thompson: Turn back and read it.

By Mr. Lange:

Q. That first question was that that tie-in was made at the time the Roma line was built. That was your answer.

A. Shortly after.

Q. Then you were asked the question as to the check meter at the Jennings Junction, and I will ask you that question now. On what do you base your knowledge that gas flowed through this Jennings Junction meter into Laredo at the time the Roma line was built; the winter of 1929 and 1930.

A. Our high pressure wells were in the east Jennings area. Jennings No. 6, which was drilled under my supervision. In order to get this additional pressure into the line to serve Laredo we had to get gas from this western section of the field, and in order to get that gas into the line to Laredo it was brought in through this east Jennings [fol. 1706] gathering system into the 10 inch, and then through the 6 inch to Pescadito.

Q. Do you know definitely whether any was brought in prior to the time the Monterrey-Roma line was completed, and gas flowing through the Roma line to Monterrey?

A. What was that?

Q. Do you know if any gas was brought from the east side of the triangle into Laredo prior to the time the Roma line was completed?

A. I do not know what you mean by that.

Q. Whether any gas was brought from the east side of the triangle into the City of Laredo before the completion and tie-up of the line at the Roma Junction?

A. I don't know that.

Q. That is exactly it. I wanted to know if you know. Now, going to the Carolina-Tex. Field you stated that speaking of other connecting or standby lines to serve the Laredo area that the extreme northeast end of the green gathering

line system shown on this map, that there is a line shown in skeleton form in green down to the Carolina-Tex Junction which you stated carried gas to San Antonio; is that correct?

A. Yes, a number of years before the connection was made.

Q. Does any gas flow from Carolina-Tex. Junction northwestward into Laredo?

A. I don't know.

[fol. 1707] Q. At this time, or did it, the period ending July 31, 1932?

A. I do not know.

Q. Did it at any time before that?

A. I do not know.

Q. You stated that you had dealt with Mr. Nordan in your capacity as an official of the South Texas at the time he was acting in his capacity as an official of the Southern in arriving at the solution of a problem as to whether or not to buy those gathering lines in green in the Carolina-Tex. Field, and the first question that came up was the question of purchase by the South Texas from the Southern of those gathering lines?

A. Yes.

Q. In connection with that portion of the trading what was the approximate amount of purchase price that was discussed?

A. As soon as I could not very readily be sold——

Q. What do you mean by not being able to be readily sold?

A. I understand it was held under a mortgage.

Q. The owner of property can sell property even if there is a mortgage on it subject to it or assume it.

A. I don't know.

Mr. Coates: Well, it depends entirely on the terms of the mortgage indenture.

Q. Did you discuss the terms of the mortgage indenture?

[fol. 1708] A. Yes, I was told the mortgage would not permit it.

Q. Did you take it up with the holders of the mortgage indenture?

A. No sir.

Q. Aren't there often properties which cannot be sold

under mortgage but which can be if you get the consent of the mortgage holder?

A. I don't know.

Q. Before you got to that point was the purchase price of the sale broached, or some tentative proposition made as to what a sale price would be?

A. No, that closed the door on that proposition.

Q. Didn't you get a tentative figure as to the value of it before you even got to that phase of the mortgage?

A. No sir.

Q. You did not figure the value of it at all?

A. No sir.

Q. Did you make any proposition as to what you would pay for it?

A. No sir.

Q. Or what it would be worth?

A. No sir.

Q. Did you make any estimate of what it would be worth if you bought it?

A. No sir, nothing definite.

Q. Did you attempt to appraise it?

[fols. 1709-1713] A. No, I did not.

Q. If you bought a piece of property like that you would want to know something about its value before you would even discuss it, wouldn't you?

A. Yes, I would want to know something about it.

Q. You made no attempt to learn its value?

A. I found out it could not be bought readily.

Q. When did you find that out?

A. At one of my meetings with Mr. Nordan.

Q. Was it early in the stage of the trading or later on?

A. It was one of the propositions that came up.

Q. You state that there was never at any time in those discussions that the trade price or the value of those lines was even discussed?

A. No price at all.

Q. And you made no effort to sound him out as to how much they would want if they did sell it?

A. I do not remember asking him the price.

Q. As near as you can remember, approximately.

A. I do not remember any price. There were also some purchase contracts in the purchases.

Q. I mean as to these gathering lines. There was noth-

ing, even a price, discussed as to what Mr. Nordan's company would want for it, or what they considered them to be worth.

A. I never asked him.

. . . . . .

[fol. 1714] Q. With reference to having some more con-
[fol. 1715] tracts of this character, would you like to buy gas in the Carolina-Tex Field, and around there, for 4 cents a thousand for your company?

A. I am not operating that section now.

Q. Well, you have a pipe line running up to the Carolina-Tex Field?

A. Yes.

Q. And a lot of wells all around that territory?

A. Yes.

Q. Plenty of gas can be bought up there for 4 cents a thousand?

A. I understand some additional wells have been discovered since that contract.

Q. And some gas can be bought for 3 cents?

Mr. Coates: What does that have to do with this case?

Mr. Bobbitt: I am talking about improvident contracts. You are charging Laredo 6 cents a thousand.

Mr. Coates: I object to it as being immaterial and not having any bearing on any issue in this case.

Commissioner Thompson: I think he said he would be glad to have some more contracts like that.

Mr. Bobbitt: That is at 6 cents a thousand. To pay one cent a thousand for gathering it.

Commissioner Thompson: I thought you were developing that line of questioning.

[fols. 1716-1746] Mr. Bobbitt: Have you made any effort, acting for this concern up there, Mr. Stein, to buy gas out there in the field at 4 cents a thousand, or construct a gathering system?

Mr. Coates: We object to it as being wholly immaterial.

By Mr. Bobbitt:

Q. Or to pay 5 cents without a gathering charge; have you made any efforts at all in that direction?

A. If you are talking about at the present time I can say "No, I have not made any efforts."

Q. Or during the year ended July 31, 1932?

A. No, I have not.

Q. As a matter of fact, you know of a number of gas wells in that vicinity that cannot sell their gas; they have no market for it?

A. I know of one or two that are shut in at the present time, but I do not know whether they failed to be successful in selling it.

Q. As a matter of fact, can't a lot of gas be bought from those wells in that vicinity for 5 cents a thousand without a gathering charge?

A. You mean now?

Q. Yes.

A. Possibly you could get the producer to extend the line to you.

* * * * * * *

[fols. 1747-1749] Testimony of M. A. Abernathy

Mr. Lange: Were you paying a gathering charge to any other than one of your subsidiary companies during the period ending July 31, 1932, from this system serving Laredo?

A. I do not recall any other.

* * * * * * *

[fol. 1750] Whereupon the witness H. E. Womack, being recalled, testified as follows:

Questions by Mr. Coates:

Q. What is your name?

A. H. E. Womack.

Q. You are the same H. E. Womack that has heretofore testified in this case?

A. Yes.

Q. Mr. Womack, have you prepared an operating statement of Texas Border Gas Company and South Texas Gas Company showing operation for inside the City of Laredo only, for the period ending October, 1932?

A. For the 12 months period ending October, 1932, yes.

Q. Have you got that in the form of an exhibit?

A. Yes, I have.

Q. And was that statement prepared in exactly the same manner, using exactly the same bases of allocations and all other bases as the exhibit you have heretofore introduced in this case covering the 12 months ended in July?

A. That is correct.

Q. Except that you used the 12 months ending October, 1932?

A. Yes, the same methods of allocation were used.

[fol. 1751] Q. Now, Mr. Womack, in anticipation of the hearing in this case which was to come off in June of this year, did you prepare an accounting exhibit for the 12 months ended March, 1932?

A. Yes.

Q. And in substantially the same form and manner as the exhibit heretofore introduced?

A. Yes sir.

Q. And the accounting exhibits prepared for those three 12 months periods will cover what entire spread of operations in months?

A. About 19 months, I believe.

Mr. Lange: Now, if the Commission please, at the time the City of Laredo made its supplementary audit, the period ending with July 31, 1932, was the final period, as we understood it.

Mr. Coates: That was by reason of the postponement in the case. You have gone back to 1910 to show a trend, but in order to show something broader than a 12 months trend we offer these exhibits.

Mr. Lange: There could be a broader trend by taking 2 or 4 years prior to that time.

Mr. Coates: But the materiality of these things, it seems to me, is in proportion to the closeness of the date of hearing, or as close as you could get to the date of the hearing.

[fols. 1752-1760a] Commissioner Thompson: We will admit them. We are anxious to see what is going on.

Mr. Lange: That is true, but at the time the City made its last audit, as of that time, we would not have had the opportunity to come right on down to date.

Mr. Coates: Yes, you could.

Mr. Lange: This is the position. The hearing date was agreed upon as the first Monday in October, and at that time we were to complete our auditing period; we did first want to run it down through June, 1931, in order to make

it an auditing period, and we took it up, and Mr. Coates said it should be some closer month, and we fixed on July 31st as the final month.

Commissioner Thompson: And you both agreed on that date?

Mr. Lange: Yes, and all the figures are based on that date.

Mr. Coates: The request was made as to what would be the last date in 1932 for which complete accounting data would be available for examination by the city's auditors in order to present an accounting exhibit for the hearing in October.

Mr. Lange: Yes, that's right.

Mr. Coates: And we told you July, and set up our main accounting exhibit as of that time.

* * * * * * *

[fols. 1761-2069] [File endorsements omitted]

[fol. 2070] The following document, marked Exhibit No. 3, offered by the Company, as shown on page 92, volume "A", at the October hearing before the Railroad Commission, in Laredo, was introduced as part of Defendant's Exhibit No. 13 upon the trial of this case, as appears at page 755, volume I, of this Statement of Facts.

Chas. E. Pickle, Official Reporter, District Court, 53rd Judicial District.

[fol. 2071] United Gas Public Service Company

Engineering Department

Houston, Texas

[fol. 2072] COMPANY'S EXHIBIT No. 3

Going Value

Definition:

"Going value" is the difference between the value of an operating, assembled and established property, functioning with a seasoned, organized, coordinated plant and personnel, with customers secured and business established, in active and efficient operation, rendering service and capable of earning a reasonable return, while charging no more than fair and reasonable rates; and the value of a like property of mere physical units, built and operable, but not actually

operating or with customers connected or business attached. As used in this appraisal, going value also means the added value of the property as a whole, over the sum of values of its component parts, which is attached to it because it is in efficient operation, has its business connected, and is capable of earning a reasonable return while charging no more than fair and reasonable rates.

Going Value Should be Added as a Separate Item:

In the appraisal of these properties the amount of going value must be added as a separate item because this element of value has not been included or taken into consideration in any other part of the appraisal.

These properties have been valued by the method of deducting existing depreciation from the present reproduction cost new, the value of the land having been taken separately. The physical elements of these properties have been inventoried and classified, and the current unit cost of every item has been applied to arrive at the total cost of the material, together with the direct cost of assembling these materials into the present co-ordinated natural gas gathering, transmission, and distribution properties.

The general construction expenditures, which include the preliminary and organization expenses, engineering and supervision expenses, administration and legal expenses, taxes during construction, and interest during construction, are inseparable from the construction of a property of this kind, and are an inevitable and necessary part of the cost. They are as much construction cost as material and labor, even though they are not capable of physical identification after the completion of the construction work, and in their nature attach to the whole or large parts of the property rather than to any particular unit.

Existing depreciation is then applied to all depreciable property, and to this is added cash working capital and materials and supplies on hand, to obtain the value of the [fol. 2073] mere physical elements of these properties, built and operable, but not actually operating or with customers connected or business established.

Thus far no consideration has been given to, nor has anything been included for, going value; and unless included as a separate and additional item, going value will be omitted.

After the completion of the construction of a natural gas

project, time is required in which to take on the customers and business enjoyed by the Company as of the date of valuation. This period is known as the "development period."

The Development Period:

In this period certain costs must be met and carried as part of the permanent cost and consequent value of the property. They arise from the fact that in the period under consideration, although the property is not fully used, the full carrying or so-called "fixed" charges, such as interest and the cost of securing business, must be met.

The fixed, or carrying, charges in question are simply such fixed charges (akin to such charges during construction) extended to the development period. The propriety of including fixed charges during construction as elements of the cost and consequent value of the property is well recognized. Similar costs during the development period are equally as real, and are elements of going value.

This period of gradual development cannot be avoided. Parts of the plant must remain idle during the development period (since it is economically desirable to provide initial facilities for the potential business securable in a few years, rather than for the business immediately available) due to the inability of the new enterprise to secure immediately all the potential business available or the inability of all possible consumers to avail themselves immediately of the use of gas. It takes time to develop the business from nothing up to full consumer and consumption saturation.

However, during this development period the Company can charge only those rates which would yield no more than a reasonable net return if it had the full measure of business attached. During this period the Company must continue to pay interest on the money invested in that part of the property necessarily installed and ready for business, but which must remain partially idle until the business is fully developed.

[fol. 2074] In determining the existence of going value, some consideration has been given to the Company's financial history, and particularly its earnings record on the dollars invested. Such an earnings record has been set up by the accountant for the City, and this record shows a history of net earnings. While these earnings are not up to

the present-day standard of an adequate and compensatory rate of return, any deficiency of earnings is the result of an insufficient rate, and not the result of an inherent inability of the properties to earn a reasonable return at fair rates well within the worth of the service rendered.

The service of natural gas for household, commercial, and industrial purposes in the territory where these properties are located, and in the country generally, is not an outworn business, but a modern, active, and growing industry, which is maintaining and ever increasing its field of usefulness.

The City of Laredo and the remaining territory served by these properties constitute a substantial market for natural gas, and the properties are well located, constructed, and designed, to reach and serve this market. Foresight has been used in planning the properties, with the present and future needs of their consumers in view, and so as to take care of a reasonable future growth such as may be expected in the part of Texas where these properties are located.

Moreover, the properties have an experienced, efficient, and co-ordinated operating personnel, and have been engaged in serving and developing their market for more than twenty years, so that consumers have grown up with and have long been accustomed to the use of natural gas.

In the extension of natural gas service to municipalities and communities which have not had this service, everyone familiar with the business understands that after the property is constructed and put in operation, there follows a period of from three to five years, or more, in which the business is being developed, and operations and operating routines are being established and co-ordinated.

These properties have a very substantial element of going value attached to and inhering in them. The only problem remaining is to measure and express this value in terms of dollars.

This going concern value herein considered is that represented by the cost of placing the companies in full and effi- [fol. 2075] cient operating momentum and of fostering and developing their position in their field of service. These elements of value now possessed have resulted from the expenditure or investment of money, and from the expenditure of energy and skill in the operation and development of the

properties over and above those costs which are represented only by the physical plant and properties. This going concern value is, therefore, to be distinguished from and considered in addition to the mere physical property structurally completed but not placed in use.

These elements of value resulting from the necessary process of transforming the inert physical properties as they stand after construction, into a going concern with the operating forces assembled and trained to work smoothly and efficiently together, with all parts of the equipment adjusted to efficient service, and with the business built up to the point of supporting the investment, are:

(a) Interest or return unearned during business development period.

If a development period of three years is taken, with 50% of the business attached at the end of the first year, 80% by the end of the second year, and present consumer and consumption saturation reached by the end of the third year, the going value can be set as the difference between the full carrying or so-called fixed charges (which have resulted from the expenditure or investment of money for the plant and from the expenditure of energy and skill in the operation and development of the property, over and above those costs which are represented only by the physical plant and properties) and the fixed charges on the investment utilized in serving those customers attached in Laredo during the development period.

The investments during the first, second, and third years in the Laredo Distribution System, are as follows.

[fol. 2076] Summary

Texas Border Gas Company

Laredo, Texas, Distribution System

Account		Cost New 1st Year	2nd Year	3rd Year
326	Land	$250	$250	$250
329	District Regulator Structures	727	727	727
330	Other Distribution System Structures	1,132	1,132	1,132
332	Measuring & Regulating Equipment:	2,780	2,780	2,780
333	Distribution Line Equipment	379,566	379,566	379,566
334	Services—Except Industrials	20,247	52,641	72,887
	—Industrials	2,170	5,641	7,811
335-6	Meters & Meter Installations	15,550	40,431	55,981
337	Service Regulators	152	395	547
338-A	Other Distribution System Equipment	2,387	6,205	8,591
-B	Furniture & Fixtures	10,295	10,295	10,295
-C	Automotive Equipment	5,807	5,807	5,807
-E	Tools & Equipment	2,428	2,428	2,428
	Total—Including Land	$443,491	$508,298	$548,802
	Total—Excluding Land	$443,241	$508,048	$548,552
General Construction Expenditures:				
	Preliminary and Organization Expense	$19,277	$19,277	$19,277
	Engineering & Supervision Expense	32,320	32,320	32,320
	Administration & Legal Expense	21,815	21,815	21,815
	Taxes During Construction	3,548	4,066	4,390
	Interest During Construction	25,364	28,545	30,532
Total General Expenditures		$102,324	$106,023	$108,334
	Land Plus 10%	$275	$275	$275
Total—Including General Construction Expenditures		$545,840	$614,346	$657,161

[fol. 2077] At the rate of 5% per annum as a Reserve for Depreciation and all other causes of retirement of physical property and 10% per annum for interest on the investment, the fixed charges on the distribution system during the first three years' operations are:

Fixed Charges During Development Period

First Year	$81,876
Second Year	92,152
Third Year	98,574
	$272,602

Consequently, the fixed charges on that part of the physical property utilized during the development period in serving those customers attached in Laredo, are:

Fixed Charges During Development Period on Investment Utilized

First Year	20,469
Second Year	59,899
Third Year	88,717
	$169,085

$272,602 — $169,085 = $103,517, Going Concern Value.

In the appraisal of the distribution system in Laredo the Going Concern Value has been conservatively set at 12½% of the investment, or $84,290.

A similar computation on that part of the transmission and field gathering system employed and used for gas distribution to consumers residing in Laredo gives the following results.

At the rate of 6% per annum for retirement of physical property, and 10% per annum for interest on the investment, the fixed charges on the transmission system during the first three years' operations are:

Fixed Charges During Development Period

First Year	$126,867
Second Year	126,867
Third Year	126,867
	$380,601

[fol. 2078] Fixed Charges During Development Period on Investment Utilized

First Year	$31,717
Second Year	82,464
Third Year	114,180
	$228,361

$380,601 — $228,361 = $152,240, Going Concern Value.

In the appraisal of the transmission system used for serving gas to consumers residing in Laredo, the Going Concern Value has been conservatively set at 12½% of the investment, or $99,115.

At the rate of 10% per annum for retirement of physical property and 10% per annum for interest on the invest-

ment, the fixed charges on the field gathering system during the first three years' operation are:

Fixed Charges During Development Period

First Year	$7,006
Second Year	7,006
Third Year	7,006
	$21,018

Fixed Charges During Development Period on Investment Utilized

First Year	$1,752
Second Year	4,554
Third Year	6,305
	$12,611

$21,018 — $12,611 = $8,407, Going Concern Value.

In the appraisal of the field gathering system used for serving gas to consumers residing in Laredo, the Going Concern Value has been conservatively set at 12½% of the investment, or $4,379.

The above are very conservative estimates, and contemplate a more rapid development of business than has been the actual experience of the United Gas System in a number of communities in Texas, Louisiana, and Mississippi.

In addition to the going concern value as shown by the above computations, there are other substantial elements [fols. 2079-2109] of value which attach themselves to the going value of the composite and co-ordinated natural gas facilities available for use in distributing natural gas to consumers in Laredo, and some of which are:

(b) Attached and trained personnel.

(c) Attached business.

(d) Establishment of operating record forms and development of methods and operating procedure.

(e) Consolidation value.

(f) Refinements of methods and operating procedure.

The record in this case shows that both the City and the utility have treated the properties as though they were owned and operated by the same Company, and have made a consolidated rate base and operating statement. As a matter of fact, these properties, together with the production properties in which the gas is produced, are operated as a part of the United Gas System. Thus there is provided and dedicated to public use and to the use of Laredo consumers, natural gas production, transmission, and distribution properties in connected operation.

The value of this connected operation is something more than the aggregate of the separate parts of the properties operated separately, and this value is not expressed or given effect in the estimates of reproduction costs of the properties themselves, and can only be expressed as an element of going value. This value results not from unity of ownership, but from unity of use and connected operation.

In this connection an additional advantage to these properties in being a part of the United Gas System is that there is a transmission line extending beyond the Carolina-Tex. Field, already constructed and ready for use, through which Laredo might be served from the gas fields in the vicinity of Bruni, Texas (where the United Gas System owns and operates other gas-producing properties) should the rapidly depleting gas reserves in the Carolina-Tex. Field become inadequate. Also, deeper sands are known to exist in the Jennings Field which, upon being developed, will offer extensive gas reserves which may be used to insure uninterrupted service to Laredo for many years.

The fact that the distributor of natural gas in Laredo owns and operates its own production and transmission properties contributes to and enhances the going concern value of these properties. The advantages to the consumer of efficient operation and experienced management are obvious. From any point of view, the elements of going concern value which have been mentioned have a substantial and real worth.

[fol. 2110]

COMPANY'S EXHIBIT 5

Texas Border Gas Company

Laredo, Texas

Natural Gas Service

Comparison of Revenues Under Present Rate with Revenues Which Would Have Been Obtained if Customers Under Franchise Rate Had Operated Under Proposed Rate During the Period For the 12 Months Period Ended July 31, 1932

Class of Business	Meters	Gas Sales M C F	Revenues Present Rate	Under Proposed Rate	Difference from Present	Percent Difference
Residential	4,288	170,752	$122,888.78	$175,669.51	$52,780.73	42.95
Commercial	327	70,486	34,142.37	36,942.04	2,799.67	8.20
Industrial	9	91,771	17,979.29	17,979.29	.....	.....
Government and Municipal	30	4,303	2,256.63	2,792.35	235.72	9.22
Public Utility—Fuel	2	76,943	15,400.10	15,400.10	.....	.....
Total	4,656	414,255	$192,667.17	$248,783.29	$55,816.12	28.97

Present Rate #1

(Franchise Rate)

$0.75 gross per 1,000 cubic feet for all gas used during the month.
Discount: 10% in 10 days.
Minimum Monthly Bill: $1.00 net.

Proposed Rate

$1.50 net each month, which $1.50 entitled consumer to use during such month 1,000 cu. ft.
.90 net per 1,000 cubic feet for the next 2,000 cu. ft. used during the month.
.70 net per 1,000 cubic feet for all additional gas used during the month.
Minimum Monthly Bill: $1.50 net.

[fol. 2111] South Texas Gas Company and Texas Border Gas Company

Laredo, Texas

Operating Statement Showing Effect of Proposed Rate on Business Now Under Franchise Rate

Twelve Months Ended July 31, 1932

Operating Revenues:	
Sale of Natural Gas:	
Residential Sales	$175,669.51
Commercial Sales	36,942.04
Industrial Sales	17,979.29
Government and Municipal Sales	2,792.35
Public Utility—For Fuel Sales	15,400.10
Reconnect Charges	1,857.40
Total Operating Revenues	$250,640.69
Operating Expenses (Assumed same as actual):	
Production Expenses	26,638.70
Transmission Expenses	12,557.80
Distribution Expenses	21,309.93
Utilization Expenses	462.83
Customers Expenses	16,071.76
New Business Expenses	6,790.34
General Expenses	30,069.66
Taxes	13,513.60
Total Operating Expenses	$127,414.62
Net Operating Revenue	123,226.07
Allowance for Reserves	66,039.00
Net Return on Appraised Value of Property	57,187.07
Per Cent Earned on Appraised Value of Property	4.57%

Note.—Rate Base $1,252,438.00.

(Here follows 1 paster, folios 2112-2119)

[Cols. 2112-2119]

Houston, 6/24/32, FCB-AWL.

Texas Border Gas Company

Laredo, Texas

Residential Natural Gas Service

Comparison of Revenue on the Basis of Monthly Bills Rendered Under Present Rate with Revenue Which Would Be Obtained Under Ordinance Rate and/or Proposed Rate For the 12 Months Period Ended March 31, 1932

MCF Zones	Monthly Bills		Gas Sales		Revenue					Average Revenue Per Bill				
	Number of A	Percent of Total Bills B	MCF C	Percent of Total MCF D	Under Present Rate E	Under Ordinance Rate F	Difference G	Under Proposed Rate H	Difference I	Under Present Rate J	Under Ordinance Rate K	Difference L	Under Proposed Rate M	Difference N
2	2,929	5.42	584	.34	$1,757.40	$1,757.40	$ 0	$2,636.10	$878.70	$0.60	$0.60	$ 0	$0.90	$0.30
1	8,667	16.03	8,667	5.04	8,667.00	8,667.00	0	13,000.50	4,333.50	1.00	1.00	0	1.50	.50
2	14,872	27.51	29,744	17.30	20,788.13	14,872.00	5,916.13†	35,692.80	14,904.67	1.40	1.00	.40†	2.40	1.00
3	11,670	21.59	35,010	20.36	24,484.00	14,004.00	10,480.00†	38,511.00	14,027.00	2.10	1.20	.90†	3.30	1.20
4-5	10,287	19.03	46,291	26.93	32,369.60	18,516.40	13,853.20†	44,748.10	12,378.50	3.15	1.80	1.35†	4.35	1.20
6-10	4,688	8.67	37,504	21.82	26,229.61	15,001.60	11,228.01†	31,878.40	5,648.79	5.60	3.20	2.40†	6.80	1.20
11-15	687	1.27	8,931	5.19	6,231.41	3,572.40	2,659.01†	7,076.10	844.69	9.07	5.20	3.87†	10.30	1.23
16-20	169	.31	3,042	1.77	2,123.26	1,216.80	906.46†	2,332.20	208.94	12.56	7.20	5.36†	13.80	1.24
21-25	58	.11	1,334	.78	930.95	533.60	397.35†	1,003.40	72.45	16.05	9.20	6.85†	17.30	1.25
26-30	14	.03	392	.23	274.35	156.80	117.55†	291.20	16.85	19.60	11.20	8.40†	20.80	1.20
31-40	7	.01	250	.15	174.37	100.00	74.37†	183.40	9.03	24.91	14.28	10.63†	26.20	1.29
41-50	2	.01	92	.05	64.29	36.80	27.49†	66.80	2.51	32.15	18.40	13.75†	33.40	1.25
51-60	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
61-70	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
71-80	1	.01	76	.04	55.89	30.40	25.49†	54.40	1.49†	55.89	30.40	25.49†	54.40	1.49
Total	54,051	100.00	171,917	100.00	$124,150.26	$78,465.20	$45,685.06†	$177,474.40	$53,324.14	$2.30	$1.45	$0.85†	$3.28	$0.98

† Red in copy.

Column	Definition
A	Number of monthly bills rendered between the zone limits shown
B	Percentage of bills rendered in each zone to total bills
C	Gas Consumption in thousand cubic feet for each zone
D	Percentage of consumption in each zone to total consumption
E	Revenue obtained in each zone under Present Rate
F	Revenue that would be obtained in each zone had the Ordinance Rate been effective over the period
G	Difference in revenue per zone between Present Rate and Ordinance Rate
H	Revenue that would be obtained in each zone had the Proposed Rate been effective over the period
I	Difference in revenue per zone between Present Rate and Proposed Rate
J	Average revenue per bill in each zone under the Present Rate
K	Average revenue per bill in each zone under the Ordinance Rate
L	Difference in average revenue per bill in each zone between Present Rate and Ordinance Rate
M	Average revenue per bill in each zone under the Proposed Rate
N	Difference in average revenue per bill in each zone between Present Rate and Proposed Rate

Present Rate

$0.75 gross per 1,000 cubic feet for all gas used during the month

Discount: 10% in 10 days
Minimum Monthly Bill: $1.00 net

Ordinance Rate

$0.40* gross per 1,000 cubic feet for all gas used during the month
Discount: 10% in 10 days
Minimum Monthly Bill: $1.00 net

Proposed Rate

$1.50 net each month which $1.50 entitles consumer to use during such month 1,000 cubic feet.
.90 net per 1,000 cubic feet for the next 2,000 cubic feet used during the month.
.70 net per 1,000 cubic feet for all additional gas used during the month.
Minimum Monthly Bill: $1.50 net.

* Ordinance Rate as applied is the gross rate.

[fols. 2120-2121] COMPANY'S EXHIBIT No. 6

July 6th, '32.

Texas Border Gas Company, Laredo, Texas.

Attention Mr. W. W. Stein, District Manager

GENTLEMEN:

Receipt, on June 29th, of petition of the Texas Border Gas Company dated June 27th, 1932, addressed to the Mayor and City Council of the City of Laredo, is respectfully acknowledged.

In order that the City of Laredo may be enabled to give the above mentioned petition proper consideration, as contemplated by our statutes, it will be necessary that the governing body of the City be furnished with the facts and figures upon which the Texas Border Gas Company's application for an increase in domestic rates is based. Upon presentation of such data to us by the Gas Company, we shall give the matter our careful consideration and then advise you as to our decision in connection therewith.

Very truly yours, Albert Martin, Mayor, City of Laredo.

[fol. 2122] COMPANY'S EXHIBIT No. 7

United Gas System

Laredo, Texas, July 12, 1932.

To the Honorable Mayor and City Council of the City of Laredo, Laredo, Texas.

GENTLEMEN:

This will acknowledge receipt of Mayor Martin's letter of the sixth instant.

Your Honorable Body now has before it three gas rate schedules, namely, a schedule of reduced rates contained in the rate reduction ordinance from which an appeal to the Railroad Commission has been taken, the existing gas rates in Laredo, and the rate schedule proposed by the Company in its recent application.

Since this entire matter is now before the Commission, we believe that the Commission should fix fair and reason-

able rates for Laredo in keeping with the testimony which is presented when the matter is heard, without regard to whether the rates so fixed are greater or less than those which have previously existed. The possible construction of the statute which requires the filing of an application for increased rates with a city which has already enacted a rate reduction ordinance, necessarily places the governing body of that city in the position of defending a schedule of reduced rates before the Commission at Austin, and at the same time sitting in judgment upon an application for increased rates at home.

We enclose a statement showing operating expenses of South Texas Gas Company and Texas Border Gas Company incurred solely in gathering, transmitting and distributing gas to the City of Laredo and the gross revenues from gas sales to Laredo consumers, such operating statement covering the twelve (12) months' period ended March 31, 1932. While we neither agree with nor accept Mr. Neff's figures, we call your attention to the fact that Mr. Neff has already fixed the value of the properties of South Texas Gas Company and Texas Border Gas Company solely used and employed to serve Laredo consumers at $718,072.26, and has found that $35,752.51 per year is a proper reserve for depreciation.

[fol. 2123] We assume that you will wish to have this operating statement checked by your city representatives and the books of the Company will be open to you for this purpose.

The checking of this operating statement will permit you, on figures wholly found by city representatives, to determine whether existing rates are more or less than adequeate.

Until you have determined the inadequacy of the existing rates, as the figures which you have at hand and which we are now furnishing you enable you to do, we think that you will agree with us that no useful purpose can be served by presenting facts and figures to show how much existing rates should be increased in order to yield a reasonable return.

We will be glad to know the conclusion you reach with respect to the adequacy of existing rates at Laredo and will be prpeared to act promptly in accordance therewith.

Very respectfully yours, Texas Border Gas Company, by (Signed) W. W. Stein, District Mgr.

[fol. 2124] South Texas Gas Company and Texas Border Gas Company

City of Laredo—Operating Statement

Twelve Months Ended March 31, 1932

Operating Revenues:	
Sale of Natural Gas:	
Residential Sales	$124,150.26
Commercial Sales	36,426.51
Industrial Sales	17,564.44
Government and Municipal Sales	2,302.28
Public Utilities—For Fuel	22,557.32
Reconnect Charges	1,820.40
Total Operating Revenues	$204,821.21
Operating Expenses:	
Production Expenses	$30,792.54
Transmission Expenses	13,616.56
Distribution Expenses	25,164.70
Utilization Expenses	563.10
Customers Expenses	13,551.05
New Business Expenses	8,077.66
General Expenses	28,160.16
Taxes	14,340.74
Total Operating Expenses	$134,266.51

[fol. 2125] The following document, marked Exhibit No. 8, offered by the Company, as shown on page 652, volume "A", at the October hearing before the Railroad Commission, in Laredo, was introduced as part of Defendant's Exhibit No. 13 upon the trial of this case, as appears at page 755, volume I, of this Statement of Facts.

Chas. E. Pickle, Official Reporter, District Court, 53rd Judicial District.

[fol. 2126] COMPANY'S EXHIBIT 8

Contract Between Texas Border Gas Company and Nuevo Laredo Gas Company

[fol. 2127] U-41. 11:1-. 8-10-31. Gas Purchase Contract

STATE OF TEXAS,
County of Webb:

This gas purchase and sales agreement made and entered into this 30th day of September, 1931, by and between Texas Border Gas Company, a corporation domiciled in Webb County, Texas, 'Seller', and Compania de Gas de Nuevo Laredo, S. A., domiciled in the City of Nuevo Laredo, State of Tamaulipas, Mexico, 'Buyer',

Witnesseth:

I

Seller, for and in consideration of the sum of Ten ($10.00) Dollars, the mutual covenants herein contained, and other good and valuable considerations, agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller all natural gas which Buyer shall distribute and sell in said City of Nuevo Laredo and environs for an original term of 3 Three years, commencing the First day of October, 1931, and ending the 30th day of September, 1934, and thereafter for successive periods of one (1) year, unless either party shall give written notice of intention to terminate to other party at least thirty (30) days prior to the time said original term or any one year renewal term hereof is to expire.

[fols. 2128-2130] II

The point of delivery of said gas shall be on the North bank of the Rio Grande River, at the outlets of Seller's meters located and used for the purpose of measuring such gas deliveries. Said gas shall be delivered at such pressure as may exist by reason of operating conditions, except that said pressure shall be maintained at not less than Twenty-Five (25) pounds per square inch.

. . . . . .

[fol. 2131] VI

For all natural gas delivered by Seller to Buyer hereunder, Buyer agrees to pay Seller the following prices:

(a) For natural gas delivered by Buyer to domestic consumers, Thirty ($.30) Cents per thousand cubic feet.

(b) For natural gas delivered by Buyer to consumers other than domestic consumers, Eighty-Five (85%) per cent of the price which each said consumer has agreed to pay Buyer for such gas; provided, however, that Buyer shall be obligated to pay Seller not less than Thirteen and Six-tenths ($.13-6/10) Cents per thousand cubic feet for such deliveries, except in those cases where sales by Buyer for less than Sixteen ($.16) cents per thousand cubic feet have been [fols. 2132-2134] first approved in writing by Seller.

(c) For unaccounted for gas, Sixteen ($.16) Cents per thousand cubic feet.

The term 'domestic consumers', as used in this contract, means all consumers using gas in domestic service and paying Buyer's domestic rate therefor, such service including the reasonable use thereof for heating, lighting and cooking in private houses, boarding houses, restaurants, apartment houses or flats, including those using gas for lighting and cooking only in hotels, bakeries and stores and for heating in hotels and buildings where separate rooms are heated by stoves, grates and other individually operated heating appliances.

Sales by Buyer to "other than domestic consumers", in order to take the price set forth in (b) hereof, shall conform in all respects to the classification of industrial sales used by Company in and about Laredo, Texas, and all such sales and sales contracts shall be subject to Company's approval as to classification.

The term 'unaccounted for gas', as used in this contract, means the difference between the total deliveries of gas by Seller to Buyer, as shown by Seller's meters located at the point or points of delivery on the north bank of the Rio Grande River, and the sum of the total deliveries of gas by Buyer to its consumers and the amount of gas consumed by Buyer for its own use.

* * * * * *

[fol. 2135] XI

This contract and all obligations and covenants hereof shall extend to and be binding upon the successors and assigns of the parties hereto.

In Testimony Whereof, the parties hereto have caused this agreement to be executed by their respective corporate officers, and their respective corporate seals to be hereto affixed, in duplicate originals, at Laredo, In Webb County, [fols. 2136-2137] Texas, on the day and year first above written.

Texas Border Gas Company, by [Signature illegible], Vice-President, 'Seller'.

Attest: Geo. D. Fiser, Assistant Secretary.

Compania de Gas de Nuevo Laredo, S. A., by M. S. Tamez, President, 'Buyer'.

Attest: D. Eck, Secretary.

[fol. 2138] COMPANY'S EXHIBIT No. 9

South Texas Gas Company and Compania Mexicana de Gas, S. A.

Agreement

This agreement made and entered into this 31st day of December, 1929, by and between South Texas Gas Company, a Delaware corporation, hereinafter called "Seller", as party of the first part, and Compania Mexicana de Gas, S. A., a Mexican corporation, hereinafter called "buyer", as party of the second part,

Witnesseth:

Whereas buyer is the owner of a natural gas pipe line extending from a point on Roma Bridge between Roma, Starr County, Texas, and San Pedro de Roma, Tamaulipas, Mexico (said point being on the international Boundary between Texas and Mexico) to the city of Monterrey, in the State of Nueva Leon, Mexico, where buyer has contracts for the sale and delivery of gas to consumers, and Buyers desires to purchase gas from Seller for the requirements of Buyer's said pipe line: and

Whereas Seller owns and controls a supply of natural gas in the Jennings Field in Zapata County, Texas and elsewhere in Texas, and owns a natural gas pipe line extending from said Jennings Field, in Zapata County, Texas, to connect with the said pipe line of Buyers at said point on the Roma Bridge, and Seller is willing to undertake to

sell and deliver gas to Buyer into Buyer's said pipe line in the amounts, for the price and upon the terms and conditions hereinafter set forth:

Now, Therefore, in consideration of the covenants and agreements hereinafter set forth to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

1

Seller agrees to sell and deliver to Buyer and Buyer agrees to purchase and receive from Seller all of the natural gas to meet Buyer's requirements of gas for resale and delivery to its customers, except such gas as Buyer may be required to purchase from producers of gas in Mexico under the terms of the concession from the Mexican Government to Buyer.

2

The gas to be delivered hereunder shall be delivered by Seller to Buyer into Buyer's pipe line at said point on the International Boundary between Texas and Mexico and [fol. 2139] shall be delivered at a pressure sufficient to meet the Buyer's market requirements from time to time up to, but not exceeding, two hundred and seventy-five (275) pounds gauge per square inch, and measurement of gas so delivered shall be made at the measuring station which Seller has heretofore constructed on the Texas side of said boundary at a point near said Roma Bridge.

Said metering equipment heretofore installed by Seller shall be maintained in accurate repair by Seller and Seller will cause the meters to be read each day. The meters, meter readings and meter charts shall be at all reasonable times accessible to inspection and examination by Buyer. The meters shall be calibrated at least once each fifteen (15) days by and at the expense of the seller, but in the presence of a representative of Buyer if Buyer so elects. Readings, calibration and adjustment of Seller's meters and changing of charts shall be done only by Seller but all data with respect thereto shall at all reasonable times be accessible to Buyer. If, upon test, the percentage of inaccuracy shall be two per cent (2%) or more, the registrations thereof shall be corrected at the rate of such inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known

and agreed upon, then for a period extending back one-half the time elapsed since the last date of calibration. Following any test, metering equipment found inaccurate shall immediately be restored to a condition of accuracy. If for any reason any meter is out of service and/or out of repair so that the amount of gas delivered cannot be ascertained or computed from the reading thereof, the gas delivered during the period such meter is out of service or repair shall be estimated and agreed upon by the parties hereto, upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of Buyer's check meter, if installed and accurately registering.

(b) By correcting the error, if the percentage of error is ascertainable by calibration, test or mathematical calculation;

(c) By estimating the quantity of the delivery by deliveries during preceding periods under similar conditions when the meters were registering accurately.

Buyer may, at its option and expense, install and operate a check meter or meters to check Seller's meters, and such check meters shall be subject at all reasonable times to inspection or examination by Seller, but the reading, calibration and adjustment thereof and the changing of charts shall be done only by Buyer.

[fol. 2140] 3

The unit of measurement *ash*ll be one thousand (1000) cubic feet at a pressure of two (2) pounds above fourteen and four-tenths (14.4) pounds absolute, at a temperature of sixty degrees (60°) Fahrenheit and at six-tenths (6/10) specific gravity. Irrespective of the actual atmospheric pressure, flowing temperature and specific gravity, these factors shall be assumed to be as above stated, and the number of cubic feet of gas shown by Seller's meters, when so corrected, shall constitute the number of cubic feet of gas delivered to Buyer, and these computations are accepted by both parties hereto as the basis upon which bills are to be rendered and payments made.

4

The price which Buyer shall pay to Seller for gas delivered hereunder shall be determined in the following manner:

For all gas delivered by Seller under this agreement, it shall receive a fair and reasonable price. The price of the gas to be supplied by Seller, beginning with the month of January, 1930, shall be Fifteen Cents (15¢) per thousand cubic feet on the measurement basis above outlined (which is agreed to be a fair and reasonable price therefor), and such price shall continue until a change be demanded by either party, whereupon such price shall be fixed by mutual agreement of the parties hereto, or, if the parties are unable to agree upon such price, the same shall, upon the demand of either party, be fixed by arbitration. If they are unable to agree upon a single arbitrator, then each party shall name an arbitrator and the two so chosen shall name a third. The decision of any two such arbitrators shall be binding upon both parties and the price so fixed by such arbitrator or arbitrators shall continure from month to month without change, unless and until a new price shall be fixed by mutual agreement or by another like arbitration which either party may demand upon the same terms and conditions at any time. The above price of Fifteen Cents (15¢) per thousand cubic feet, which it is agreed is a fair and reasonable price at this time, is based on the cost of producing and purchasing gas in the field, the cost of operating wells and gathering systems, the cost of operating transmission lines and measuring stations, the cost of prividing standby connections to other sources of supply, the loss and leakage of gas between the put-in and delivery points, the maintenance of all physical properties used in rendering the service, depreciation and amortization on such physical pro-erties, taxed on such physical properties, and an amount to cover interest discount and contingencies on the investments made by Seller for the purpose of rendering the service equal to ten percent (10%) per annum on such investment. It is further agreed that the above [fol. 2141] factors shall be given consideration and proper weight in determining any further changes in the selling price of gas under this contract.

Buyer shall make payment to Seller on or before the twenty-fifth (25th) day of each month for all gas delivered hereunder during the preceding month on the basis of payment hereinafter provided.

5

The obligations of Seller hereunder are subject to the reservation of sufficient gas for each of the following:

(a) Drilling obligations;

(b) To perform obligations of Seller to deliver gas to fee owners under the terms of the leases held by Sellers;

(c) To perform the obligations of Seller under all contracts or commitments heretofore made by Seller, Provided, however, that gas required by Buyer for domestic purposes shall have priority over industrial gas supplied by Seller to Buyer under such contracts or commitments.

Nothing in this agreement shall in any way restrict the right of Seller at any time to sell, transport and deliver natural gas to others than Buyer, provided that Seller shall give this agreement prio-ity and preference over all contracts for the sale of gas entered into subsequent to the date of this agreement, except that gas supplied by Seller for domestic purposes shall at all times have prio-ity over industrial gas supplied hereunder.

6

In the event of either party being rendered unable wholly or in part by force majeure to carry out its obligations under this contract, other than the obligation to make payments of amounts due hereunder, it is agreed that on such party gibing notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such case shall so far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraint of rulers and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, freezing of wells [fol. 2142] or lines of pipe, partial or entire failure of

natural gas wells, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension, which by the exercise of due diligence such party shall not have been able to avoid.

7

This agreement shall continue and remain in force and effect until the 31st day of December, 1939, and thereafter until terminated by either party giving six (6) months written notice thereof to the other party.

8

Seller warrants the title to all gas delivered hereunder and agrees, if notified thereof by Buyer, to idemnify Buyer from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse legal claims of any and all persons to said gas.

9

The gas deliverable hereunder shall be natural gas as produced in its natural state from the wells, except that Seller may permit the extraction of natural gas gasoline, probiced that seller shall not subject said gas nor permit said gas to be subjected to treatment in the extraction of natural gas gasoline which shall substantially change the chemical composition of any of the component parts of said gas, permit or cause the admission of oxygen or which will dilute said natural gas. Seller is to tender delivery to Buyer only of natural gas which is of merchantable quality.

10

This agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

11

This agreement may be simultaneously executed in several counterparts and all such counterparts, executed and delivered, each as an original, shall constitute but one and the same instrument.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their respective corporate

officers thereunto duly authorized and their respective corporate seals to be hereunto affixed, on the day and year first written above.

South Texas Gas Company, by ——— ———, President.

Attest: ——— ———, Secretary.

Compania Mexicana de Gas, S. A., by ——— ———, President.

Attest: ——— ———, Secretary.

[fol. 2143] COMPANY'S EXHIBIT 9—(2)

South Texas Gas Company and Compania Mexicana de Gas, S. A.

Amendment, January 23, 1932

[fol. 2144] Whereas, on the 31st day of December, 1929, a certain contract and agreement was made and entered into by and between South Texas Gas Company, a Delaware corporation, therein and hereinafter called "Seller," as party of the first part, and Compania Mexicana de Gas, S. A., a Mexican corporation, therein and hereinafter called "Buyer," as party of the second part, wherein and whereby Seller agreed to sell and deliver to Buyer and Buyer agreed to purchase and receive from Seller all of the natural gas to meet Buyer's requirements of gas for resale and delivery to its customers, except such gas as Buyer might be required to purchase from producers of gas in Mexico under the terms of the concession from the Mexican Government to Buyer, all as is fully set out in said contract and agreement of December 31, 1929, which is hereby referred to and made a part hereof for all purposes; and

Whereas Buyer and Seller desire to amend and supplement said contract so as to provide a different basis for determining the price to be charged by Seller and paid by Buyer for gas delivered under said contract:

Now, Therefore, in consideration of the premises and for the purpose of establishing by agreement the price to be paid for gas deliverable under said contract, it is agreed by and between said parties as follows:

[fol. 2145]

I

The price to be received by Seller from Buyer for all gas sold and delivered to Buyer by Seller under said above mentioned contract shall be determined by taking the cost of gas delivered into the pipe line of the Seller at Jennings Field Junction in Texas (such cost in no event to be less than five cents per thousand cubic feet), adding thereto the amount of the import tax per thousand cubic feet paid by Buyer to the Mexican Government, subtracting the resulting total from the average resale price received per thousand cubic feet for all gas sold by Buyer, and dividing the remaining balance between Buyer and Seller, such division to be based on the proportion that the distance gas is transported by Buyer and Seller, respectively, bears to the total distance from said Jennings Field Junction in Texas to the City of Monterrey, Mexico, and Seller's resulting proportionate amount of such remaining balance plus an amount equal to the average cost price per thousand cubic feet of all gas delivered into Seller's pipe line at said Jennings Field Junction (such average cost price in no event to be less than five cents per thousand cubic feet) shall constitute the price to be paid by Seller to Buyer for gas delivered hereunder.

II

This agreement shall be effective from and after January 1, 1931, and all accounts between Buyer and Seller repre-
[fol. 2146] senting gas delivered by Seller to Buyer since such date, shall be adjusted in accordance herewith.

III

Except as herein changed and amended, said original agreement of December 31, 1929, between Buyer and Seller shall be and remain in full force and effect for the entire term thereof.

IV

This agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

V

This agreement may be simultaneously executed in several counterparts and all of such counterparts, executed

and delivered each as an original, shall constitute but one and the same instrument.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their respective corporate officers thereunto duly authorized and their respective corporate seals to be hereunto affixed on this, the 23 day of January, 1932.

South Texas Gas Company, by R. H. *Hargin* [Signature illegible], Vice President.

Attest: Geo. D. Fiser, Assistant Secretary.

Compania Mexicana de Gas, S. A., by H. E. Randall, Vice President.

Attest: J. *Bledzow* [Signature illegible], Sub. Secretary.

[fol. 2147] The following document, marked Exhibit No. 10, offered by the Company, as shown on page 677, volume "A", at the October hearing before the Railroad Commission, in Laredo, was introduced as part of Defendant's Exhibit No. 13 upon the trial of this case, as appears at page 755, volume I, of this Statement of Facts.

Chas. E. Pickle, Official Reporter, District Court, 53rd Judicial District.

[fol. 2148] COMPANY'S EXHIBIT 10

Agreement Between Southern Gas Company and South Texas Gas Company

[fol. 2149] This Agreement made and entered into, this 1st day of November, 1929, by and between Southern Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "Southern", party of the first part, and South Texas Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "South Texas", party of the second part,

Witnesseth:

Whereas, Southern is the owner of a gathering system in the Carolina-Texas Gas Field in Webb County, Texas, and has contracts for the purchase of gas from wells located

in said field, from which said wells it is now taking gas into said gathering system; and

Whereas, South Texas owns a gas pipe line extending from said Carolina-Texas Gas Field to the City of Laredo, Texas, and desires to make pipe line connections to the [fol. 2150] gathering system of Southern and purchase from Southern all gas which Southern may purchase from wells in said Carolina-Texas Gas Field and take into said gathering system;

Now, Therefore, for and in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

I

Southern agrees to maintain and keep in good repair its said gathering system in the Carolina-Texas Gas Field, and further agrees that it will from time to time negotiate for the purchase of gas from any wells which may be completed near its gathering system, and if satisfactory purchase arrangements can be made, will connect such wells into said gathering system.

II

Southern agrees that South Texas shall have the right to [fol. 2151] make necessary changes in said gathering system, and to take up and re-lay such parts of said gathering system as may be necessary to enable South Texas to make proper connection of its pipe line to said gathering system. Southern further agrees that South Texas shall have the right to reimburse itself for all expense incurred in making such necessary changes by withholding one-sixth (1/6) of the first monies accruing to Southern under this agreement, as hereinafter set out.

III

South Texas shall operate said gathering system and pay all the cost of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system as well as all measuring equipment, shall make any and all new well connections and shall regularly calibrate all meters recording deliveries of gas into said gathering system.

[fol. 2152]

IV

Southern will continue, in its own name, to purchase and receive into said gathering system, and will account therefor to the owner of each respective well, all gas from wells now connected to said gathering system or which may hereafter be connected to said system.

V

In cases where gas wells owned by South Texas, or controlled by South Texas under gas purchase agreements, can be connected with the said gathering system of Southern, providing such gas can be taken through said gathering system more advantageously than such gas can be taken direct into the lines of South Texas (in order to avoid duplication of gathering lines in this Field), South Texas shall allow Southern to connect such wells to its gathering system and to transport said gas through said gathering system and deliver the same into the pipe line of South Texas. For all such gas so taken into said gathering system of Southern, South Texas shall pay Southern, as consideration for the use of said gathering system in transporting such gas, the sum of one cent (1¢) per thousand cubic feet, measured at two pounds above an assumed abso-
[fol. 2153] lute atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch.

VI

South Texas shall purchase and receive from Southern under this agreement all gas which may be received in said gathering system from all wells connected thereto (except gas taken from wells owned or controlled by South Texas), it being understood, however, that South Texas shall purchase and receive under this agreement an average minimum of two million cubic feet of gas daily, provided Southern is able to deliver that amount of gas from wells connected to said gathering system. The volume of gas delivered to South Texas hereunder shall be taken to be the combined total of all gas delivered from the wells into said gathernig system as measured at the wells (except gas taken from wells owned or controlled by South Texas), it being intended by this arrangement that South Texas will assume all loss from leakage in gathering lines. South Texas shall have the right to use said gathering system to the full capacity

thereof for the transportation and delivery of said gas from the wells to its pipe line system.

[fol. 2154] VII

For all gas which South Texas takes and receives from Southern hereunder, South Texas shall pay Southern at the rate of six cents (6¢) per thousand cubic feet measured at two pounds above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch. Billing for this gas by Southern to South Texas shall be based upon the combined meter readings of each well delivering gas into said gathering system. Statements will be rendered by Southern to South Texas as quickly after the end of each month as practical, and payment shall be made by South Texas to Southern on or before the twentieth day of each month covering all gas taken during the preceding calendar month.

VIII

This agreement shall continue and remain in force as long as the wells which are connected with said gathering system or which may hereafter be connected therewith are capable of delivering gas into said gathering system in commercial quantities, unless sooner terminated by agreement of the parties hereto.

[fols. 2155-2163] IX

This agreement shall extend to and be binding upon the respective successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have executed this instrument in two counterparts, each of which shall constitute an original, as of the day and year first above written.

Southern Gas Company, by *L. A. Mordan*, Vice-President.

Attest [Signature illegible], Assistant Secretary.

South Texas Gas Company, by [Signature illegible], Vice-President.

Attest: Leo Wright, Assistant Secretary.

[fols. 2164-2167] [File endorsements omitted]

* * * * * * *

[fols. 2168–2170] CITY'S EXHIBIT "A"

General Summary and Allocation

	Cost New		Present Value
Gathering System	14672		11014
Transmission System	558290		392162
Distribution System	583192		478637
Total	1156154		881813
Less Land, Leases & Rights of Way	14809		14809
	1141345		867004
	22565		22565
	1118780	(75½%)	844439
Included with and incorporated in this amount as Expense of Purchase and Storage Deducted on account of being excessive	39320		29687
	1079460		814752
Allocated to Laredo 83.18%	897895	(75½%)	677711
(Prorated cost of construction)			
Preliminary & Organization Exp. 2%	17958		17958
Engineering & Supervision 2½%	22447		16943
Administration & Legal 1½%	13468		10166
Taxes during Construction ½%	4489		4489
Interest during Construction 3½%	31426		23720
Additional Allowance for Purchase & Storage	10000		7550
83.18% Land, Rights of Way, etc.	12318		12318
83.18% Material & Supplies	18770		18770
	1028771		789625
Working Cash			11157
Rate Base			800782

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[fols. 2171–2195] Gathering System

Summary

Acct. No.		Cost of Reproduction New	Less Depreciation
307	Rights-of-way	124	124
310	Field Regulating & Measuring Structures	239	215
311	Other Gathering System Structures	3,286	2,456
313	Field Lines	7,257	5,080
314	Field Regulating & Measuring Station Equipment	1,967	1,634
315	Other Gathering System Equipment:		
	A—Drips	444	368
	B—Choke Racks	432	346
	C—Furniture & Fixtures	174	122
	D—Automotive Equipment	140	78
	E—Tools & Equipment	61	43
	Total, Except Material and Supplies	14,124	10,466
	Material and Supplies	548	548
	Total—Gathering System	14,672	11,014

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[fols. 2196-2396] Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4,350	4,350
Acct. 318 Rights-of-way	9,985	9,985
Acct. 320 Transmission Regulating & Measuring Station Structures	2,235	1,979
Acct. 321 Other Transmission System Structures	19,997	13,256
Acct. 323 Transmission System Regulating and Measuring Station Equipment	11,185	9,692
Acct. 324 Transmission Line Equipment	481,485	327,394
Acct. 325 Other Transmission System Equipment:		
A—Farm Taps	104	88
B—Telephone System	21,806	19,625
C—Miscellaneous	246	209
D—Furniture & Fixtures	1,114	640
E—Automotive Equipment	1,606	804
F—Tools & Equipment	248	211
Total, Except Material & Supplies	554,361	388,233
Material & Supplies	3,929	3,929
Total—Transmission System	558,290	392,162

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[fols. 2297-2416] Summary

Distribution—Laredo

Property Inside City Limits

	Cost New	Less Depr.
Acct. 326 Land	350	350
Acct. 329 District Regulator & Measuring Station Structures	727	582
Acct. 330 Other Distribution System Structures	1,132	898
Acct. 332 Measuring & Regulating Equipment	2,780	2,297
Acct. 333 Distribution Line Equipment—Intermediate Low Pressure	86,281 293,285	70,196 243,028
Acct. 334 Services:		
A—All except Industrial	80,986	64,789
B—Industrial	8,679	6,943
Acct. 335 & 336 Meters & Meter Installations (Inside City Limits)	62,201	49,761
Acct. 337 Service Regulators	608	486
Acct. 338 Other Distribution System Equipment:		
A—Industrial Installations	8,546	8,712
B—Furniture & Fixtures	10,285	7,824
C—Automotive Equipment	5,807	2,862
E—Tools & Equipment	2,427	1,821
Total, Except Material & Supplies	565,104	460,549
Acct. 338 Other Distribution System Equipment:		
D—Material & Supplies	18,088	18,088
Total—Distribution System—Laredo	583,192	478,637

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[fols. 2417-2425] CITY'S EXHIBIT A

Supplement 2

General Summary and Allocation

	Cost New		Present Value
Gathering System	$14,672		$11,014
Transmission System	558,290		392,162
Distribution System	583,192		478,637
Total	$1,156,154		$881,813
Less: Land, Leases & Rights-of-Way	14,809		14,809
Balance	$1,141,345		$867,004
Materials & Supplies	22,565		22,565
	$1,118,780	(75½%)	$844,439
Included with and incorporated in this amount as Expense of Purchase and Storage deducted as being excessive	39,320		29,687
	$1,079,460	(75½%)	$814,752
Add Back Land, Leases & Right-of-way	14,809		14,809
Add for Purchases & Storage	10,000		7,550
	$1,104,269		$837,111
Allocated to Laredo 83.18%	918,531		696,309
Preliminary & Organization Expense—2%	18,371		18,371
Engineering & Supervision—2½%	22,963		17,408
Administration & Legal—1½%	13,778		10,445
Taxes During Construction—½%	4,593		4,593
Interest During Construction—3½%	32,149		24,371
83.18% Materials & Supplies	18,770		18,770
Total	$1,029,155		$790,267
Working Cash			11,157
			$801,424
Rate Base			9,274
Add			$810,698

[fol. 2426] CITY'S EXHIBIT "C"

STATE OF TEXAS,
County of Webb:

I, the undersigned, A. F. Muller, County Tax Collector of Webb County, Texas, do hereby certify that the records of my office disclose the following payments for ad valorem taxes made by the Border Gas Company for the years 1911 and 1912 in Webb County, Texas:

For the year 1911 on an assessed valuation of $42,075 the total tax paid was the sum of $438.28
(Receipt No. 1176).
For the year 1912 on an assessed valuation of $800 the tax paid was the sum of 8.13
(Receipt No. 927).
Also for the year 1912 on an assessed valuation of $57,135 the total tax paid was the sum of 580.87
(Receipt No. 928).

Dated at Laredo, Texas, this 15th day of May, A. D. 1934.
A. F. Muller, by B. G. Salinas, Deputy County Tax Collector, Webb County, Texas. (Seal Collector of Taxes, Webb County, Texas.)

[fols. 2426½-2433] STATE OF TEXAS,
County of Webb.

I, the undersigned, G. P. Farias, Tax Collector for the City of Laredo, do hereby certify that the records of this office disclose that on the 30th day of April, 1912 the Border Gas Company paid to this office the sum of $400.29 representing City of Laredo ad valorem taxes for the year 1911 on a valuation of said Company's properties in the sum of $25,825.00.

Dated at Laredo, Texas, this 10th day of May, 1934.
G. P. Farias, Tax Collector, City of Laredo, Webb County, Texas. (Seal City Tax Collector, Laredo, Texas.)

. . . . . .

(Here follows 1 paster, folios 2434-2435.)

[Docket No. 2434-2435]

CITY'S EXHIBIT "E"

Schedule No. 1

Border Gas Company, Texas Border Gas Company and South Texas Gas Company

Historical Cost of Fixed Capital as Shown by Company Books

Year		Historical Cost per Books: Additions	Retirements	Net Additions	Accumulated Additions	Depreciation per Books: Provision for Deprn. Charged to Operations	Less Charges to Reserve	Less Retirement Expense Charged to Operations	Accumulated Depr'n per Company Books	Adjusted Depreciation: Depr'n at 2%	Depr'n at 5%	Accumulated Depr'n at 2%	Accumulated Depr'n at 5%
	Border Gas Company:												
1909	Construction	$166,996.68		$166,996.68	$166,996.68								
1911	1- 1-11 to 12-31-11	29,241.36	$646.09	28,595.27	195,591.95					$3,625.88	$9,064.71	$3,625.88	$9,064.71
1912	1- 1-12 to 6-30-12	14,620.68	323.04	14,297.64	209,889.59					4,054.82	10,137.04	7,680.70	19,201.75
1913	6-30-12 to 6-30-13	13,003.21	174.09	12,829.12	221,718.71					4,326.06	10,815.21	12,006.78	30,016.96
1914	6-30-13 to 6-30-14	7,735.79	54.86	7,680.93	230,399.64					4,511.18	11,277.96	16,517.96	41,294.92
1915	6-30-14 to 6-30-15	5,737.40	1,825.71	3,911.69	234,311.33	$82,230.48		$1,664.04	$80,566.44	4,647.11	11,617.77	19,501.03	51,248.65
1916	6-30-15 to 6-30-16	123,532.92	11,134.27	111,398.65	345,709.98			8,731.52	71,834.92	5,800.22	14,500.54	16,569.73	57,017.67
1917	6-30-16 to 6-30-17	7,083.12	23,077.29	15,994.17*	329,715.81			19,318.90	52,516.02	6,754.26	16,885.65	4,005.09	54,584.42
1918	6-30-17 to 6-30-18	15,069.85	5,069.23	10,000.62	339,716.43	24,363.76		1,707.79	75,171.99	6,694.33	16,735.81	8,991.63	99,612.44
1919	6-30-18 to 6-30-19	14,643.45		14,643.45	354,359.88	36,380.98		797.99	110,754.98	6,940.76	17,351.91	15,134.40	88,166.36
1920	6-30-19 to 12-31-19	10,579.25		10,579.25	364,939.13	18,833.44		1,718.91	127,869.51	3,596.49	8,991.24	17,011.98	98,488.60
1920	1- 1-20 to 12-31-20	17,160.54		17,160.54	382,099.67	33,869.06	$483.44	182.99	161,072.14	7,470.30	18,675.96	23,815.94	111,443.23
1921	1- 1-21 to 12-31-21	12,452.82		12,452.82	394,552.49	32,319.67	2,168.77	1,727.84	189,495.20	7,766.52	19,416.30	27,685.55	126,967.91
1922	1- 1-22 to 12-31-22	179,713.71		179,713.71	574,266.20	40,326.61	873.02	653.22	228,295.57	9,688.19	24,220.48	35,847.80	149,662.13
1923	1- 1-23 to 12-31-23	141,584.26	13,085.96	128,498.30	702,764.50	52,921.93	7,718.91	8,570.93	264,627.66	12,770.30	31,925.77	33,028.26	164,936.06
1924	1- 1-24 to 12-31-24	73,489.21		73,489.21	776,253.71	61,341.64	5,712.71	1,191.53	319,085.06	14,790.18	36,975.46	39,914.29	196,089.28
1925	1- 1-25 to 12-31-25	131,192.98		131,192.98	907,446.69	69,856.79	3,700.11	3,561.41	381,680.33	16,837.00	42,092.51	49,489.68	220,909.27
1926	1- 1-26 to 12-31-26	56,161.43		56,161.43	963,608.12	77,644.23	673.13	537.05	458,094.38	18,710.54	46,776.37	66,990.04	275,496.46
1927	1- 1-27 to 12-31-27	34,307.27	9,056.79	25,250.48	988,858.60	81,514.07	21,589.20	1,108.09	516,911.16	19,524.66	48,811.67	65,817.41	301,580.24
1928	1- 1-28 to 4-10-28	26,366.02	8,712.49	17,653.53	1,006,512.13	23,001.68	8,471.63	85.50	531,355.71	5,542.53	13,856.35	60,802.81	306,890.06
	Total Book Costs of Properties Transferred to South Texas Gas Co.	$1,079,671.95	$73,159.82	$1,006,512.13	$1,006,512.13	$634,604.34	$51,390.92	$51,857.71	$531,355.71	$164,051.44	$410,128.69	$60,802.81	$306,890.06
	*South Texas Gas Company (S) and Texas Border Gas Company (T):												
1928	4-10-28 to 12-31-28 S	15,287.70	3,157.12	12,130.58)		15,414.40	1,284.00)						
	T	31,592.93	7,423.89	24,169.04)	1,042,811.75	8,408.95	5,090.25)		548,804.81	14,800.67	37,001.66	69,220.23	337,507.47
1929	1- 1-29 to 12-31-29 S	4,673.56	3,774.02	899.54)		21,558.83	158.32)						
	T	21,044.84	8,320.71	12,724.13)	1,056,435.42	11,947.44	1,205.43)		580,947.33	20,992.46	52,481.18	88,857.94	336,634.90
1930	1- 1-30 to 2-28-30 S	11,877.52		11,877.52)		3,883.21	)						
	T	3,275.69	643.50	2,632.19)	1,070,945.13	2,046.39	)		586,876.93	3,545.63	8,864.09	92,403.57	397,488.99
1930	3- 1-30 to 6-30-30 S	7,537.72		7,537.72)		6,744.09	)						
	T	7,374.03	205.21	7,168.82)	1,085,651.67	3,319.67	)		596,940.69	7,188.66	17,971.63	99,592.23	415,460.62
1931	7- 1-30 to 6-30-31 S	34,176.15	15,858.80	18,317.35)		12,336.90	269.90)						
	T	28,394.51	4,183.04	24,211.47)	1,128,180.49	4,715.78	1,501.63)		612,221.84	22,138.31	55,345.80	119,959.01	469,084.89
1932	7- 1-31 to 7-31-32 S	15,880.59	124,198.68	118,318.09)**		9,236.43	132,886.70)						
	T	40,092.11	1,100.86	38,991.25)	1,048,853.65	19,538.10	2,319.72)		505,789.95	24,868.31**	62,165.78**	9,618.90	396,994.35
	Totals	$1,300,879.30	$252,025.65	$1,048,853.65	$1,048,853.65	$753,754.53	$196,106.87	$51,857.71	$505,789.95	$257,583.48	$643,958.83	$99,618.90	$396,993.35

* Note.—Additions Indentified as Pertaining to Transmission Line from Jennings to Roma Eliminated.

** Note.—Transmission Lines Retired, New Lines not yet Charged into Capital Account, Depreciation Computed on Full Operating Balances. The Adjusted Computations for Depreciation are Inaccurate to the Extent that Land, Organization Costs and Rights of Way Are Included in the Computation.

[fols. 2436-2437] CITY'S EXHIBIT F

Witness Stein, identified. 3/13/34. H. B.
Witness Kinney, 11-16-32. H. B.
Pl. Exh. No. 7. — 3/15/34.

Laredo, Texas, June 26, 1923.

Capital Stock Tax Return, Form 707, 1923, for Taxable Period Ended June 30, 1923

Mr. G. R. Page, Houston, Texas.

DEAR SIR:

Copy of letter received from the office of the Commissioner of Internal Revenue requesting additional information in re above return, is enclosed.

A statement of Sinking Fund and Depreciation account of December 31, 1921 is also enclosed. Kindly advise explanation to be made regarding difference between book value and fair value shown on return.

The following explanation made to the Commissioner Feb. 25, 1921, regarding the difference in "Plant Account" on our 1920 and 1921 return will probably suffice to explain this account satisfactorily: "It represents property acquired at the time of organization of the Company in 1911 and included tangible property that originally cost $166,-966.68, as well as franchise, good will, etc., of a going concern. It is the opinion of the officers of the Company that the amount shown in the "Fair Value" column of our Capital Stock Tax Return was the true value of the property on the date reported."

Kindly advise in regard to the above, and oblige.

Yours very truly, (Signed) W. W. Stein.

WWS-SF.
TMT-GWF.

[fol. 2438] CITY'S EXHIBIT "G"

Witness Stein, identified 3/13/34. (Part of Ex. G.) H. B. Pl. Exh. No. 6 —3/15/34.

Laredo, Texas, April 14, 1921.

Income and Profits Tax Return Calendar Year 1918

Mr. G. R. Page, Houston, Texas.

DEAR SIR:

The enclosed copy of trial balance and copy of analysis of investment as of December 31, 1910, covers our record of property acquired by the old company prior to January 1, 1911 when the present accounts of Border Gas Company were begun. All vouchers and other records, I understand, were sent to Houston when the original plant was completed and turned over to Border Gas Company.

From information I have been able to obtain all of this property was purchased by the old company during the calendar year 1910, all of the construction work having been begun and completed during that year.

Trusting that this will enable you to prepare the statement, as outlined in your letter, I am

Very truly yours, (Signed) W. W. Stein.

WWS-SF.
TMT.

[fol. 2439] Ex. G. Witness Kinney, 11-16-32

Border Gas Company

Analysis of Investment

Statement	December 31, 1910
Real Estate	150.00
Rights of Way	10.93
Buildings	14.72
Tools	34.13
Fittings	17,364.05
Telephone Line from Reiser to Laredo	1,601.95
Labor, Teaming, Freight & Miscellaneous	31,718.83
Gas Receivers and Regulators	2,382.20
Gas Meters	5,791.00
Office Furniture	332.68
Horses and Wagons	225.00
Automobile	1,535.00

Line Pipe Size	Length Feet—Inches		
1"	3,039' 9"	130.49	
1¼"	3,034' 4"	177.04	
2"	28,905' 8"	2,684.66	
3"	34,562' 2"	5,527.21	
4"	89,203' 4"	22,316.43	
6"	36,672' 4"	13,032.26	
8"	128,649' 2"	71,838.25	
10¾"	2,213' 4"	1,862.03	
12¾"	155' 11"	163.64	
16"	150' 7"	208.60	
			117,940.61
Total Investment			179,101.10

179,101.10
166,996.68

12,104.42

[fols. 2440-2442] Border Gas Company

Balance Sheet Balance Sheet	December 31, 1910 December 31, 1910	
Investment	179,101.10	
Gas Ledger	648.23	
Warehouse Account	923.94	
Cash—Milmo National Bank	2,896.69	
Petty Cash	69.23	
Southern Trust Company		182,990.96
Gas Earnings		516.58
Producers Oil Company		131.65
	183,639.19	183,639.19

CITY'S EXHIBIT "H"

Border Gas Company, Texas Border Gas Company and South Texas Gas Company

Comparative Statement of Earnings

For the Seven Year Period Ended December 31, 1931

	Border Gas Company			*Border Gas to 4-10-28 Texas Border and South Texas to 12-31-28	Texas Border Gas Company* and South Texas Gas Company		
	1925	1926	1927	1928	1929*	1930*	1931*
Operating Revenues—							
Gas Sales	$355,306.82	$394,649.89	$343,667.22	$365,046.74	$385,520.48	$393,528.78	A$305,434.58
Forfeited Discounts	5,898.54	7,310.69	9,190.13	9,741.74	10,548.18	11,555.81	.....
Other Operating Revenues	3,224.80	5,789.29	5,722.63	2,049.74	2,265.32	2,436.00	2,317.30
Total Operating Revenues	$364,428.16	$407,749.87	$358,579.98	$376,838.22	$398,333.98	$407,520.59	$307,751.88
Operating Expenses—							
Gas Purchases	$137,041.67	$136,411.81	$105,197.89	$80,309.28	$76,360.89	$76,896.60	$47,507.45
Transmission and Distribution Operations	19,146.90	22,144.21	23,883.67	25,679.64	25,630.23	32,572.96	28,650.31
Transmission and Distribution Maintenance	11,246.79	10,727.37	10,653.31	10,142.41	7,524.96	13,117.14	20,308.23
General Expense	28,125.18	32,416.14	26,723.93	41,965.87	78,072.18	55,041.88	61,864.78
Taxes—Other than Income	9,845.02	15,483.12	11,386.29	10,172.09	14,968.80	17,240.10	17,959.05
Total Operating Expenses	$205,515.56	$217,172.65	$180,794.09	$168,270.29	$197,557.14	$194,570.68	$170,789.77
Net Return Before Providing for depreciation or Federal Income Tax	$158,912.60	$190,577.22	$177,785.89	$208,567.93	$200,776.84	$212,949.96	$136,962.11

* Operations of Monterrey Line Eliminated from Revenues and Expenses of South Texas Gas Company in Consolidating Operations with Texas Border Gas Company.

A—1931 Gas Sales include Forfeited Discounts.

(Here follows one paster, side folio 2444)

[Ex. 2444]

Border Gas Company
Statement of Earnings
From January 1, 1911 to December 31, 1924

	1-1-11 to 6-30-12	Fiscal Year Ended June 30th 1913	1914	1915	1916	1917	1918	1919	7-1-19 to 12-31-19	Year Ended December 31st 1920	1921	1922	1923	1924
Operating Revenues:														
Gas Earnings (net)	$70,023.75	$59,537.98	$52,047.80	$45,923.73	$33,526.13	$49,962.91	$76,756.42	$91,261.83	$43,618.27	$123,472.75	$139,963.01	$148,689.03	$150,114.24	$179,304.95
Premium Earnings	.....	.....	.....	3,459.85	16.79	1,736.18	1,105.66	1,705.37	2,229.41	3,859.45	1,579.86	1,494.52	.....	995.78
Other Operating Revenues	.....	.....	.....	10.74	341.71	248.76	84.33	.....	1,879.10	44.53	.....	77.08	74.23	198.17
Total Operating Revenues	$70,023.75	$59,537.98	$52,047.80	$49,394.32	$33,884.63	$51,949.85	$77,946.43	$92,967.20	$47,726.78	$137,406.76	$141,562.87	$150,260.63	$150,188.47	$180,498.90
Operating Expenses:														
Production and Distribution Operations	$9,419.79	$5,332.81	$4,668.56	$5,053.43	$5,531.00	$6,506.53	$6,428.87	$7,924.29	$4,769.62	$12,891.62	$15,431.05	$16,066.08	$19,261.78	$17,482.51
Production and Distribution Maintenance	1,060.22	955.67	6,854.69	809.95	5,780.56	13,846.66	7,833.70	10,699.45	2,659.83	6,047.97	5,109.93	7,731.71	14,019.11	14,277.41
General Expense	11,152.14	7,909.39	7,029.36	8,210.90	9,310.13	10,197.93	11,970.32	13,559.28	7,995.53	17,945.76	19,804.66	22,891.85	24,280.95	24,980.11
Taxes	2,205.70	1,728.76	2,488.77	2,205.72	2,444.63	1,948.97	2,151.49	2,083.72	1,574.36	3,900.25	5,817.26	9,310.85	13,018.95	6,280.13
Total Operating Expenses	$23,837.85	$15,926.63	$21,011.40	$16,280.00	$23,066.32	$32,500.09	$28,384.38	$33,606.84	$17,002.64	$40,685.61	$49,162.90	$55,990.54	$70,571.79	$82,910.16
Earnings Before Providing for Depreciation and Income Tax	$46,185.90	$43,611.35	$31,036.40	$33,114.32	$10,829.31	$19,449.76	$49,562.05	$59,460.36	$30,724.14	$96,721.15	$92,399.97	$94,270.04	$79,616.68	$117,588.74

[Vol. 2445]

Texas Border Gas Company

Statement of Earnings

April 10, 1928 to December 31, 1931

	Apr. 10, 1928 to Dec. 31, 1928	Year Ended Dec. 31, 1929	Year Ended Dec. 31, 1930	Year Ended Dec. 31, 1931
Operating Revenues:				
Gas Sales	$233,476.66	$385,520.48	$393,002.38	$301,430.03*
Forfeited Discounts	7,611.64	10,548.18	11,555.81	.....
Other Operating Revenues	1,760.09	2,265.32	2,436.00	2,317.30
Total Operating Revenues	$242,848.39	$398,333.98	$406,994.19	$303,747.33
Operating Expenses:				
Gas Purchases	$148,501.37	$222,117.56	$252,649.56	$161,330.20
Distribution System Operations	14,341.19	19,227.05	23,270.94	14,574.89
Distribution System Maintenance	3,527.35	8,672.73	9,005.13	15,617.80
General Expense	17,717.27	35,210.13	37,047.65	54,936.40
Taxes—Other than Federal Income	5,353.53	10,995.81	13,016.22	13,600.17
Total Operating Expenses	$189,440.71	$296,423.28	$335,089.50	$260,358.96
Net Return on Invested Capital Before Providing for Depreciation	$53,407.68	$101,910.70	$71,904.69	$43,388.37

* Includes Forfeited Discounts.

1379

[fol. 2446]

South Texas Gas Company

Statement of Earnings

From April 10, 1928 to December 31, 1931

	Apr. 10, 1928 to Dec. 31, 1928	Year Ended Dec. 31, 1929	Year Ended Dec. 31, 1930	Year Ended Dec. 31, 1931
Operating Revenues:				
Gas Sales to Texas Border Gas Co.	$148,501.87	$222,117.55	$222,649.55	$161,330.20
Gas Sales to Cia. Mexicana de Gas	.....	2,790.30	226,446.50	192,162.46
Gas Sales to Right-of-Way Consumers	.....	.....	526.40	4,004.55
Total Operating Revenues	$148,501.87	$224,907.85	$456,622.45	$357,497.21
Operating Expenses:				
Gas Purchases	$48,766.83	$77,200.99	$161,566.15	$137,291.25
Transmission System Operations	4,026.08	6,288.18	20,219.78	19,282.40
Transmission System Maintenance	4,248.20	8,652.25	9,088.21	10,207.45
General Expenses	16,461.37	27,762.05	27,962.40	17,289.76
Taxes	1,818.56	4,048.05	9,281.22	9,577.86
Total Operating Expenses	$75,324.99	$120,201.52	$228,094.76	$193,648.72
Net Return on Invested Capital Before Providing for Depreciation	$73,176.48	$95,706.34	$218,527.70	$163,848.49

Note.—Gas Purchases Computed at 5¢ per 1000 M.C.F.

(Here follows one photo, side folio 2447.)

[Rule 2445-2450]

Curr's Exhibit "L"

South Texas Gas Company and Texas Border Gas Company

Consolidated Statements of Earnings

From Operations Within the City Limits of Laredo

For the Years Ended June 30, 1929, 1930, 1931 and July 31, 1932

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Operating Revenues:				
Gas Sales	$281,320.97	$319,473.23	$254,153.13	$192,349.13*
Forfeited Discounts	7,899.28	8,451.06	7,176.81	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,106.96
Total Operating Revenues	$290,705.62	$329,592.80	$262,993.30	$194,456.09
Operating Expenses:				
Gas Purchases	$56,122.05	$62,233.80	$50,412.75	$23,561.10
Transmission System Operations	4,473.46	8,779.63	4,727.45	3,167.15
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,737.74
Distribution System Operations	17,515.98	19,318.45	13,701.53	11,561.45
Distribution System Maintenance	3,773.79	5,554.47	8,299.11	12,506.66
Customers' Expense	.....	.....	8,618.47	15,367.28
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33
General Office and General Expense	41,520.51	50,577.60	25,117.95	29,884.60
Taxes Other than Income Tax	10,619.67	14,341.39	15,560.58	12,738.30
Other Operating Expense	.....	.....	962.96	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Return Before Provision for Depreciation or Income Tax	$149,452.24	$162,331.42	$129,347.66	$80,306.47

* Includes Forfeited Discount.

1931

[fol. 2451]

South Texas Gas Company

Statement of Earnings for the Year Ended June 30, 1929

	Total	Other Towns	Laredo Total	Laredo Outside City	Laredo Inside City
Operating Revenues:					
Gas Sales	$211,067.98	$13,387.58	$197,680.40	$28,149.32	$169,531.08
Operating Expenses:					
Gas Purchases	$70,201.12	$3,504.88	$66,696.24	$10,584.19	$56,132.05
Transmission System Operations	5,594.62	279.17	5,315.45	841.99	4,473.46
Transmission System Maintenance	6,684.88	333.58	6,351.30	1,006.07	5,345.23
New Business Expense	733.29	46.49	686.80	97.82	588.98
General Expense	27,791.64	1,761.99	26,029.65	3,707.40	22,322.25
Taxes—Other than Income Tax	3,468.20	575.11	2,893.18	436.90	2,456.28
Total Operating Expenses	$114,473.84	$6,501.22	$107,972.62	$16,654.37	$91,318.25
Net Return Before Providing for Depreciation and Income Tax	$96,594.14	$6,886.36	$89,707.79	$11,494.95	$78,212.83

[Vol. 2452]

South-Texas Gas Company

Statement of Earnings for the Year Ended June 30, 1930

	Total	Monterrey Line	Laredo District Lines			
			Other Towns	Laredo		
				Total	Outside City	Inside City
Operating Revenues:						
Gas Sales	$339,350.51	$288,718.85	$16,634.54	$324,007.12	$31,294.95	$192,712.17
Operating Expenses:						
Gas Purchases	$114,094.02	$96,121.46	$4,226.58	$73,695.98	$11,423.09	$62,272.89
Transmission System Operations	15,966.71	4,576.61	587.76	10,392.34	1,613.71	8,778.63
Transmission System Maintenance	5,292.53	1,585.40	207.07	3,500.06	458.67	3,041.39
New Business Expense	660.62	126.05	34.56	499.99	65.61	434.38
Customers' Expense	89.47	24.10	4.52	60.85	8.50	52.35
General Expense	42,260.27	11,864.33	2,184.64	28,421.31	4,109.73	25,311.58
Taxes—Other than Income Tax	7,682.70	2,825.53	304.58	4,712.59	696.60	4,015.99
Total Operating Expense	$186,986.32	$156,963.47	$7,650.06	$122,332.82	$18,473.91	$103,848.91
Net Return Before Providing for Depreciation and Income Tax	$142,364.19	$131,755.38	$8,974.51	$101,684.30	$12,821.04	$88,863.26

1863

[fol. 2453]

South Texas Gas Company

Statement of Earnings for the Year Ended June 30, 1931

	Total	Misc. Sales	Monterrey Line	Laredo District		
				Other Towns	Laredo	
					Outside City	Inside City
Operating Revenues:						
Gas Sales	$499,302.09	$2,437.20	$304,742.25	$15,663.14	$30,539.69	$145,919.81
Operating Expenses:						
Gas Purchases	$165,928.85	$575.19	$101,051.05	$4,014.00	$12,885.86	$50,412.75
Transmission System Operations	18,416.23	53.41	12,049.74	377.53	1,208.10	4,727.45
Transmission System Maintenance	11,015.24	31.95	7,207.27	225.81	722.60	2,827.61
General Office and General Expense	23,931.82	112.36	13,995.29	720.06	1,403.43	6,700.66
Taxes—Other than Income Tax	9,849.13	23.27	5,934.76	351.06	669.92	2,870.12
Other Expenses	41.89	.12	27.41	.86	2.75	10.75
Total Operating Expense	$231,193.16	$796.30	$140,265.52	$5,689.32	$16,892.66	$67,549.36
Net Return Before Providing for Depreciation and Income Tax	$268,108.93	$1,640.90	$164,476.73	$9,973.82	$13,647.03	$78,370.45

[fol. 2454]

South Texas Gas Company

Statement of Earnings for the Year Ended July 31, 1932

				Texas Border Gas Company			
					Laredo		
	Total	Misc. Sales	Monterrey Line	Other Towns	Total	Outside City	Inside City
Operating Revenues:							
Gas Sales	$300,211.57	$5,385.25	$177,455.14	$10,692.72	$115,678.46	$20,443.51	$95,230.95
Rent Revenue	122.74	1.94	75.24	3.85	41.71	7.38	34.33
Total Operating Revenues	$300,334.31	$5,387.19	$177,530.38	$10,696.57	$115,720.17	$20,450.89	$95,264.28
Operating Expenses:							
Gas Purchases	$115,496.85	$1,982.40	$81,892.10	$2,261.95	$29,460.40	$6,776.75	$22,703.65
Transmission and Gathering System Exp.	16,504.16	269.12	11,843.38	288.82	4,112.84	945.69	3,167.15
Transmission and Gathering System Maintenance	9,159.69	143.81	6,572.99	160.30	2,282.59	524.85	1,757.74
General Office and General Expense	18,545.47	293.02	11,366.37	582.33	6,301.75	1,114.58	5,187.17
Taxes	8,582.27	166.14	5,176.35	319.80	2,919.98	613.05	2,306.93
Total Operating Expenses	$168,288.44	$2,724.49	$116,853.19	$3,613.20	$45,097.56	$9,974.92	$35,122.64
Net Return Before Providing for Depreciation	$141,045.87	$2,662.70	$60,677.19	$7,083.37	$70,622.61	$10,480.97	$60,141.64

1956

[fol. 2455]

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1929

			Gas Operations			
				Laredo		
	Total	Mdse. & Jobbing	Other Towns	Total	Outside City	Inside City
Operating Revenue:						
Gas Sales	$364,500.18	.....	$30,898.11	$333,602.07	$52,281.10	$281,320.97
Forfeited Discounts	10,294.88	.....	887.92	9,366.96	1,467.68	7,899.28
Other Operating Revenues	1,924.55	.....	163.20	1,761.35	275.98	1,485.37
Merchandise & Jobbing Revenues	26,441.83	$26,441.83	.....	.....	.....	.....
Total Operating Revenues	$403,101.44	$26,441.83	$31,929.23	$344,730.38	$54,024.76	$290,705.62
Operating Expenses:						
Gas Purchases	$211,067.96	.....	$13,387.56	$197,680.40	$28,149.32	$169,531.08
Distribution System Operations	20,567.60	.....	2,433.45	18,154.15	638.22	17,515.93
Distribution System Maintenance	4,435.58	.....	524.29	3,911.29	137.50	3,773.79
New Business Expense	1,790.03	$116.77	140.96	1,532.28	286.52	1,245.76
General Expense	26,619.33	1,746.26	2,108.29	23,765.23	3,567.07	19,198.26
Taxes—Other than Income Tax	9,124.66	.....	514.36	8,610.32	446.93	8,163.39
Merchandise & Jobbing Costs and Expense	22,862.51	22,862.51	.....	.....	.....	.....
Total Operating Expenses	$296,478.26	$24,725.54	$19,108.95	$252,643.77	$33,177.56	$219,466.21
Net Return Before Providing for Depreciation and Income Tax	$106,623.18	$1,716.29	$12,820.28	$92,086.61	$20,847.20	$71,239.41

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1930

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo		
				Total	Outside City	Inside City
Operating Revenues:						
Gas Sales	$415,512.32	.....	$38,430.60	$377,081.72	$57,608.49	$319,473.23
Forfeited Discounts	10,991.11	.....	1,016.66	9,974.45	1,523.37	8,451.08
Other Operating Revenues	2,170.00	.....	200.73	1,969.27	300.76	1,668.51
Merchandise and Jobbing Revenues	28,220.19	$28,220.19	.....	.....	.....	.....
Total Operating Revenues	$456,893.62	$28,220.19	$39,648.01	$389,025.42	$59,432.62	$329,592.80
Operating Expenses:						
Gas Purchases	$240,631.66	.....	$16,624.54	$224,007.12	$31,294.95	$192,712.17
Distribution System Operations	23,020.08	.....	3,024.84	19,995.24	676.79	19,318.45
Distribution System Maintenance	5,618.77	.....	869.71	5,749.06	194.59	5,554.47
New Business Expense	4,173.11	$257.48	382.22	3,533.40	542.92	3,010.48
General Expense	34,961.08	2,156.48	3,083.75	29,760.80	4,547.13	25,213.67
Taxes—Other than Income Tax	11,556.07	.....	656.72	10,899.35	583.96	10,315.40
Merchandise & Jobbing Costs and Expense	24,617.16	24,617.16	.....	.....	.....	.....
Total Operating Expenses	$345,567.53	$27,031.12	$24,571.79	$293,964.97	$37,840.33	$256,124.64
Net Return Before Providing for Depreciation and Income Tax	$111,325.74	$1,189.07	$15,076.22	$95,060.45	$21,592.29	$73,468.16

1937

[fol. 2457]

Texas Border Gas Company

Statement of Earnings for the Year Ended June 30, 1931

	Total	Mdse. & Jobbing	Gas Operations		
			Other Towns	Laredo Outside City	Laredo Inside City
Operating Revenues:					
Gas Sales	$340,739.14	.....	$32,313.10	$54,273.91	$254,152.13
Forfeited Discounts	9,621.68	.....	912.14	1,532.73	7,176.81
Other Operating Revenues	2,230.00	.....	211.40	355.24	1,663.36
Merchandise and Jobbing Sales	37,271.88	$37,271.88	.....	.....	.....
Total Operating Revenues	$389,862.70	$37,271.88	$33,436.64	$56,161.88	$262,992.30
Operating Expenses:					
Gas Purchases	$192,122.64	.....	$15,663.14	$30,539.69	$145,919.81
Distribution System Operations	16,664.48	.....	2,388.02	574.93	13,701.53
Distribution System Maintenance	10,082.84	.....	1,444.87	347.86	8,290.11
Customers' Expense	10,482.21	.....	1,502.10	361.54	8,618.47
New Business Expense	5,981.73	$571.85	513.23	861.37	4,035.28
General Office and General Expense	13,914.60	1,330.24	1,193.87	2,003.70	9,386.79
General Expense—Divisional	13,386.42	1,279.74	1,148.56	1,927.55	9,030.43
Taxes—Other than Income Tax	14,390.78	.....	982.33	778.04	12,630.41
Merchandise and Jobbing Costs and Expense	34,360.50	34,360.50	.....	.....	.....
Other Operating Expenses	428.37	.....	61.39	14.77	352.21
Total Operating Expenses	$311,814.58	$37,542.33	$24,847.51	$37,409.60	$212,015.09
Net Return Before Providing for Depreciation and Income Tax	$78,048.12	$270.45†	$8,589.13	$18,752.23	$50,977.21

† Red in copy

Texas Border Gas Company

Statement of Earnings for the Year Ended July 31, 1932

	Total	Mdse. & Jobbing	Other Towns	Laredo City Gate	Less: Outside City Limits	Operations Inside City Limits
Operating Revenues:						
Gas Sales	$256,137.08	.....	$25,155.73	$230,981.30	$38,632.17	$192,349.13
Reconnect Charges	2,183.40	.....	301.53	1,881.87	73.14	1,808.73
Rent Revenues	175.50	.....	.....	175.50	.....	175.50
Miscellaneous Operating Revenues	109.12	.....	15.07	94.05	3.65	90.40
Merchandise and Jobbing Sales	10,780.60	$10,780.60	.....	.....	.....	.....
Total Operating Revenues	$269,385.65	$10,780.60	$25,472.33	$233,132.72	$38,708.96	$194,423.76
Operating Expenses:						
Gas Purchases	$126,218.63	.....	$10,692.72	$115,525.91	$20,448.51	$95,077.40
Distribution System Operations	13,956.38	.....	1,927.38	12,029.00	467.54	11,561.46
Distribution System Maintenance	15,097.36	.....	2,084.94	13,012.42	505.76	12,506.66
Customers' Expense	18,550.55	.....	2,561.83	15,988.72	621.44	15,367.28
New Business Expense	6,966.06	$255.80	804.98	5,934.20	918.97	4,615.23
General Office and General Expense	20,122.54	804.90	1,908.59	17,414.05	2,891.61	14,522.44
General Expense—Divisional Operations	14,099.64	668.95	1,333.73	12,200.96	2,025.97	10,174.99
Taxes	12,272.06	.....	1,183.15	11,188.91	707.54	10,481.37
Merchandise & Jobbing Expenses	15,670.82	15,670.82	.....	.....	.....	.....
Total Operating Expenses	$242,382.06	$17,295.47	$22,342.32	$203,844.27	$28,587.34	$174,256.93
Net Return Before Providing for Depreciation	$27,003.59	$6,514.87†	$3,280.01	$30,288.45	$10,121.62	$20,166.83

† Red in copy.

1932

[fol. 2459]

South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management Fees	$7,656.27	$11,811.82	$2,220.91	$1,815.88
Loss on Bad Debts	728.30	2,138.14	1,204.80	2,574.47
Advertising	1,283.76	2,591.58	1,485.04	2,054.63
General Office Expense Prorated from United Gas Company	.....	.....	9,309.98	12,309.27
Special Payrolls Prorated from United Gas Company	.....	.....	5,000.25	3,194.30
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,896.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,348.32
General Expense Prorated from United Production Co.	.....	.....	.....	158.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

[Col. 2660]

South Texas Gas Company

Questionable Items Contained in Operating Statements

Years Ending June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929:				
Management Fees	General Expense	$3,178.92	80.52%	$2,558.32
Year Ended June 30, 1930:				
Management Fees	General Expense	$7,486.84	38.51	$4,368.52
Year Ended June 30, 1931:				
Management Fees	General Expense	$2,985.80	29.22	$857.84
General Office Expense Prorated	" "	7,051.76	29.22	2,060.58
Special Payrolls—United	" "	5,541.80	29.22	1,619.21
General Expense—Southern Gas Co.	" "	1,985.22	29.22	580.08
Total		$17,514.60		$5,117.76
Year Ended July 31, 1932:				
Management Fees	General Expense	$1,982.79	27.97%	$554.62
General Office Expense Prorated	" "	10,688.60	27.97	2,988.60
Maintenance General Structures	" "	387.66	27.97	108.43
General Expense—Southern Gas Co.	" "	3,208.47	27.97	895.33
General Expense—United Prod. Co.	" "	560.38	27.97	156.94
Total		$16,152.90		$4,517.97

1931

[fols. 2461-2462]

Texas Border Gas Company

Questionable Items Contained in Operating Statements

Years Ended June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929:				
Management Fees	General Expense	$7,075.64	72.12%	$5,102.95
Loss on Bad Debts	" "	1,002.91	72.12	723.30
Advertising	New Bus. "	1,750.66	72.12	1,263.76
Total		$9,829.21		$7,110.01
Year Ended June 30, 1930:				
Management Fees	General Expense	$10,268.57	72.14	$7,406.00
Loss on Bad Debts	" "	2,963.57	72.14	2,138.14
Advertising	New Bus. "	3,582.33	72.14	2,581.58
Total		$16,850.17		$12,155.72
Year Ended June 30, 1931:				
Management Fees	General Expense	$2,020.56	67.46	$1,363.07
Loss on Bad Debts	Customers' "	1,874.80	82.23	1,204.80
Advertising	New Bus. "	2,216.18	67.46	1,495.04
General Office Expense Prorated	General "	10,879.63	67.46	7,339.40
Special Payrolls—United Gas Co.	" "	5,114.06	67.46	3,449.94
General Expense Prorated—Southern Gas Co.	" "	205.57	67.46	138.68
Total		$22,010.80		$15,060.93

Year Ended July 31, 1932:

Management Fees	General Expense		$1,735.98	72.17	$1,253.04
Loss on Bad Debts	Customers'	"	3,343.19	82.84	2,773.64
Loss on Bad Debts	General	"	139.72	72.17	100.83
Advertising	New Bus.	"	2,845.93	72.17	2,054.63
General Office Expenses Prorated	General	"	13,293.22	72.17	9,595.77
Maintenance General Structures	"	"	451.57	72.17	325.99
General Expense Prorated—Southern Gas Company	"	"	1,264.56	72.17	912.63
Special Payrolls—United Gas Co.	"	"	4,370.59	72.17	3,154.26
Donations	"	"	343.16	72.17	247.66
Donations	Dis't. System Operations		241.50	82.84	200.06
Testing Mains for Leaks	Dis't. System Operations		1,016.84	82.84	842.35
Laredo Rate Case Expense	General Expense		1,859.94	72.17	1,342.52
Total			$30,961.30		$23,239.06

1933

[fols. 2463-2464] [File endorsements omitted]

[fol. 2465] CITY'S EXHIBIT "J"

6" MAIN TRA
FROM JENNIN
PESCADITO

TRANSMISSION L
NINGS GAS FIELD
ITO JUNCTION

LINE
D TO

DATE OF INVENTO
VENTORY MARCH 12, 1931

ENGINEERING DEPARTMENT

SAN ANTONIO, TEXAS

Item	Quantity	Kind	Size	Value	Corr. by Date
Gate Valve	1	Darling F.E.N.R.S	8" 300#		C.Y. 3-12-31
" "	1	Westcott F.E.N.R.S	8" 300#		C.Y. 3-12-31
" "	1	Westcott F.E.N.R.S	8" 300#		C.Y. 3-12-31
" "	1	Pittsbourgh S.E.N.R.S	8" 300#		C.Y. 3-12-31
" "	5	Westcott S.E.N.R.S	6" 300#		C.Y. 3-12-31
" "	4	Westcott S.E.N.R.S	4" 300#		C.Y. 3-12-31
" "	2	Westcott F.E.N.R.S	8" 300#		C.Y. 3-12-31
" "	2	Westcott S.E.N.R.S	4" 300#		C.Y. 3-12-31
Plug Valve	2	Nordstrom	4" 250#		C.Y. 3-12-31
Gate Valve	5	Westcott S.E.N.R.S	2" 300#		C.Y. 3-12-31
" "	1	Westcott S.E.N.R.S	2" 300#		C.Y. 3-12-31
" "	1	Lunkenheimer S.E.N.R.S	1" 150#		C.Y. 3-12-31
Swedge	6		6"x8"		C.Y. 3-12-31
"	1		4"x8"		C.Y. 3-12-31
"	5		4"x6"		C.Y. 3-12-31
Expention Sleeve	5		8"		C.Y. 3-12-31
" "	2		6"		C.Y. 3-12-31
" "	1		4"		C.Y. 3-12-31
Robinson Check Valve	1		6"		C.Y. 3-12-31
" "	1		4"		C.Y. 3-12-31

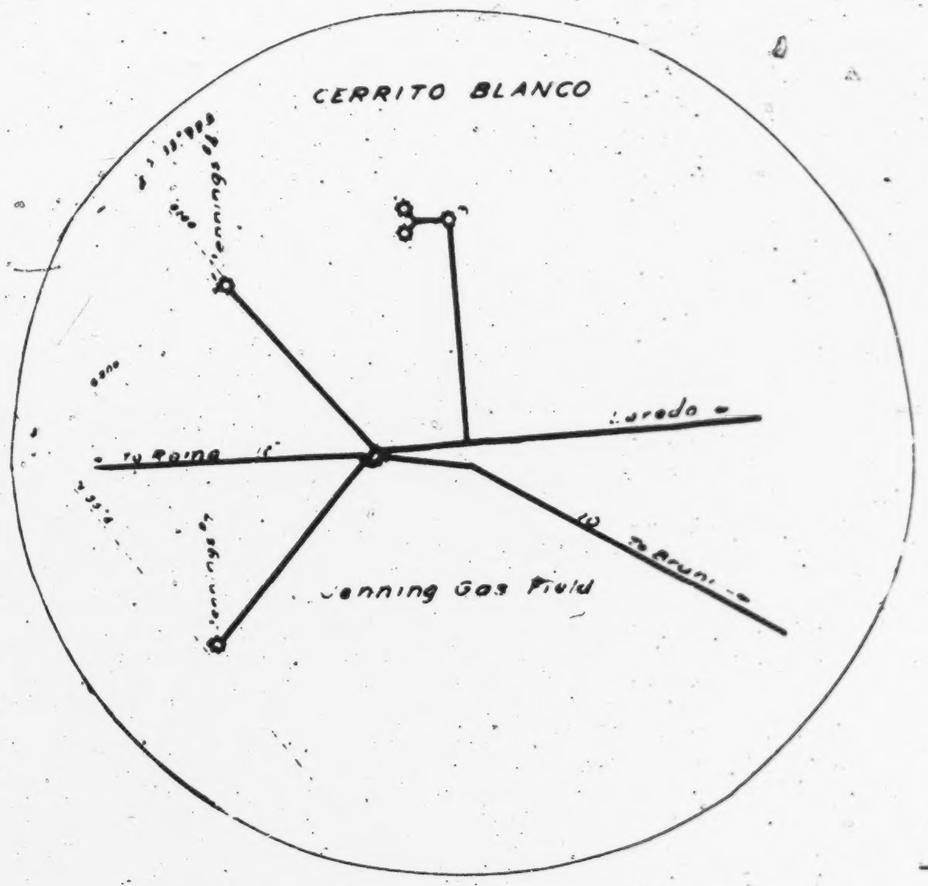
Item	Quantity	Kind	Size	Value	Corr. by Date
Saddle Clamp	35		6"		C.Y. 3-12-31
" "	1	1" Tap	6"		"
Henderson Clamp	6		6"		"
Dresser Clamp	2		6"		"
Bull Plug	3		4"x12"		"
" "	3		2"x12"		"
" "	2		2"x4"		"
Screw Plug	2		2"		"
Nipple	4		4"x12"		"
" "	2		2"x4"		"
" "	8		2"x6"		"
" "	1		2"x8"		"
" "	1		1"x3"		"
" "	2		1"x6"		"
" "	1		1"x8"		"
" "	1		1"x4"		"
" "	6		8"x6"		"
Ell	6		2"		"
"	3		1"		"
Street Ell	3		1"		"

Item	Quantity	Kind	Size	Value	Corr. by Date
Coller	2		2"		
"	1		1"		
Tee	1	Lufkin 300#	2"		
Stop Cock	1	"	1"		
Union	1		1"		
Metric Valve	6		½"		
Meter & Tubeing	2	Double Forboro			
Orifice Flange	13 set		8"		
Gauge	2	200#			
"	1	100#			
Regulator	1	Chaplin Fulton	4"		
	1	High Press Emco	4"		
	1	High Press Emco	6"		
	1	Little Giant	1"		
Pipe	63'		12"		
"	3030'		8"		
"	180334'		6"		
"	165'		4"		
	49'		2"		
"	45'		1"		

Corr. by Note	Item	Quantity	Kind	Size	Value	Corr. by Date	Item	Quantity	Kind	Size	Value	Corr. by Date	Item
C.Y. 3-12-31	Collar	2		2"		C.Y. 3-12-31	Gate Valve	2	Chapman SENRS	2"		C.Y. 3-12-31	
"	"	1		1"		"	Saddle Clamp	2		2½		C.Y. 3-12-31	
"	Tee	1	Lufkin 300#	2"		"	Nipple	1		2½"		C.Y. 3-12-31	
"	Stop Cock	1		1"		"	"	1		2"		C.Y. 3-12-31	
"	Union	1		1"		"	Bull Plug	1		2½"		C.Y. 3-12-31	
"	Metric Valve	6		⅛"		"							
"	Meter & Tubeing	2	Double Foxboro			"							
"	Orifice Flange	1 Set		8"		"							
"	Gauge	2	200#			"							
"	"	1	100#			"							
"	Regulator	1	Chuplin Fulton	4"		"							
"	"	1	High Press Emco	4"		"							
"	"	1	High Press Emco	8 6		"							
"	"	1	Little Giant	1"		"							
"	Pipe	63'		12"		"							
"	"	3030'		8"		"							
"	"	10339'		6"		"							
"	"	168'		4"		"							
"	"	49'		2"		"							
"	"	45'		1"		"							

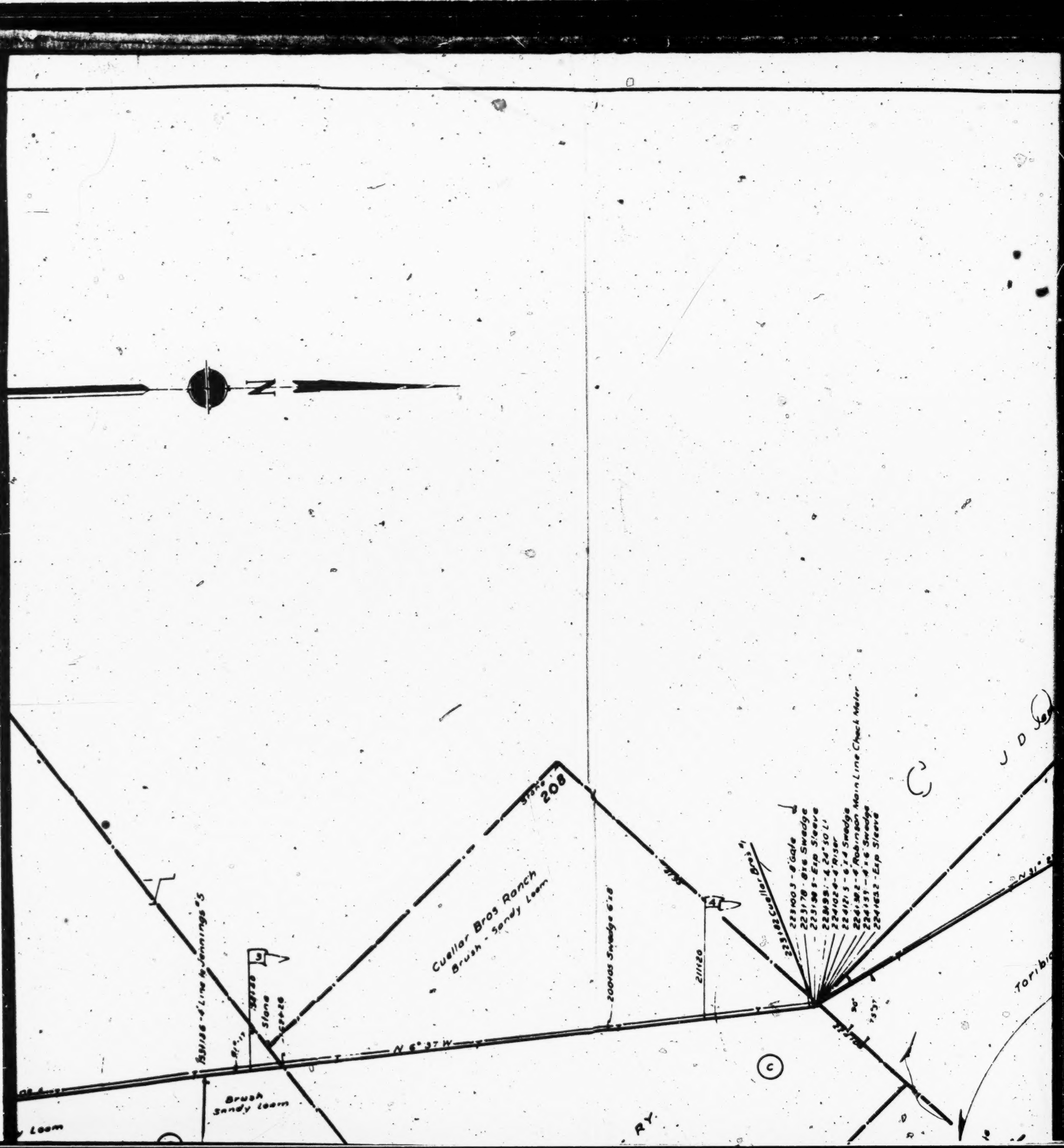
Quantity	Kind	Size	Value	Corr. by Date	Item	Quantity	Kind	Size	Value	Corr. by Date

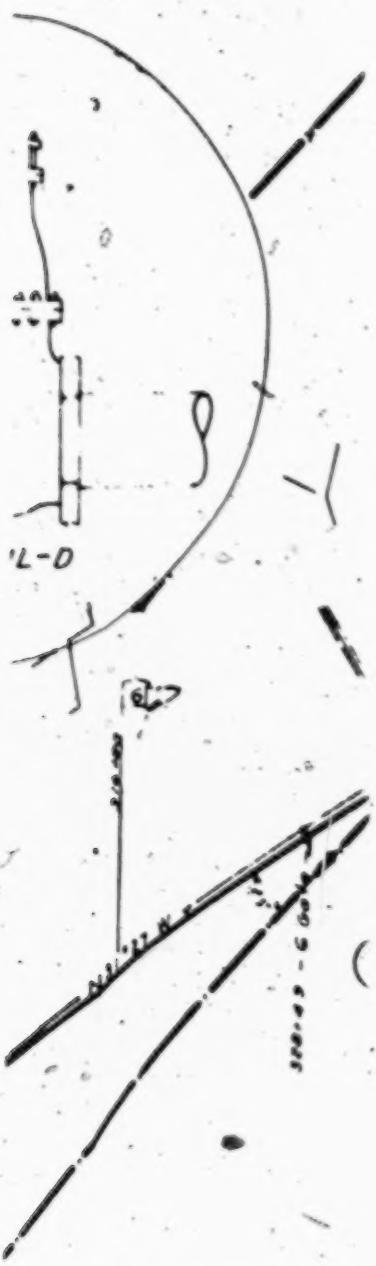
CERRITO BLANCO

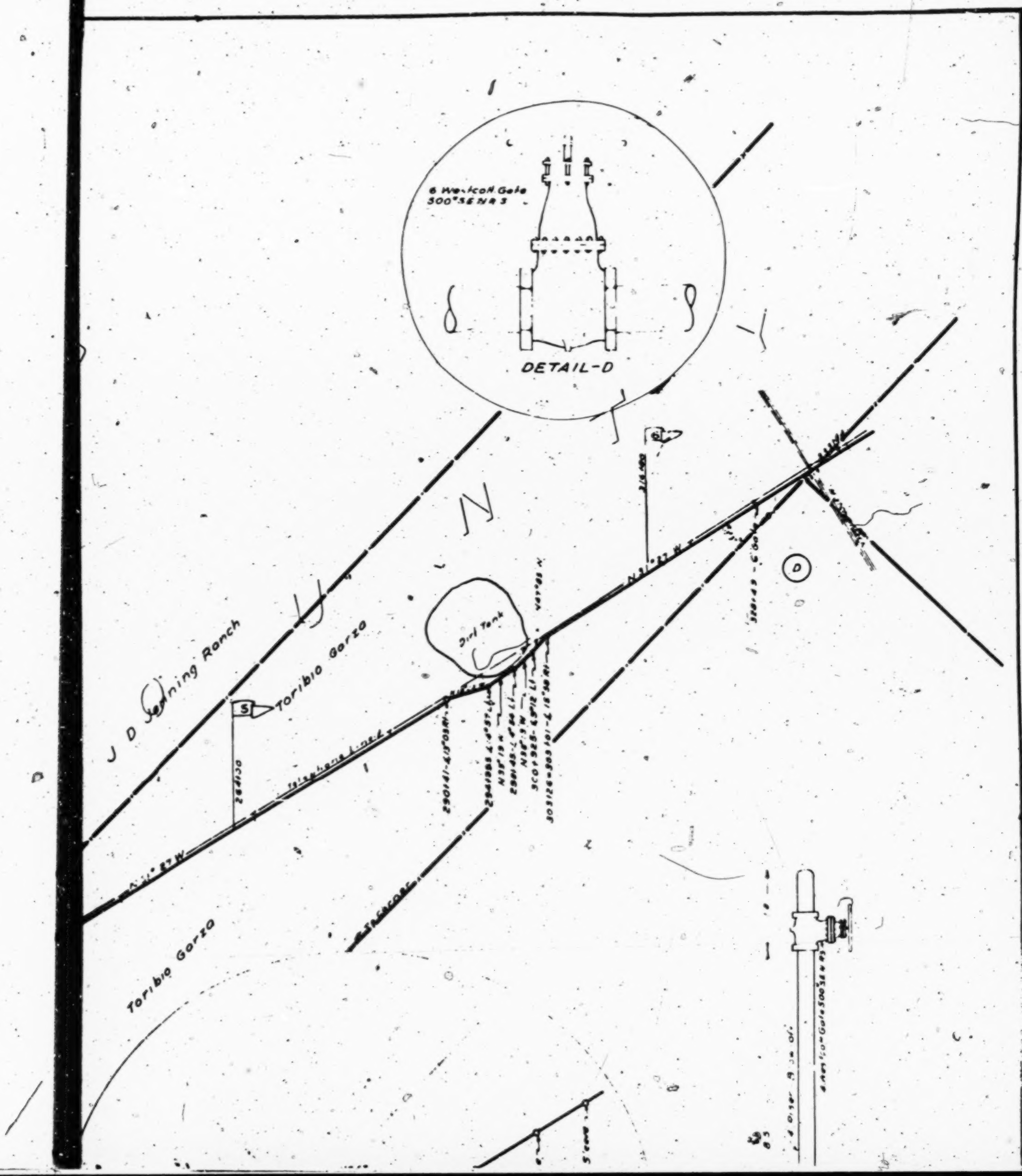


Z A P A

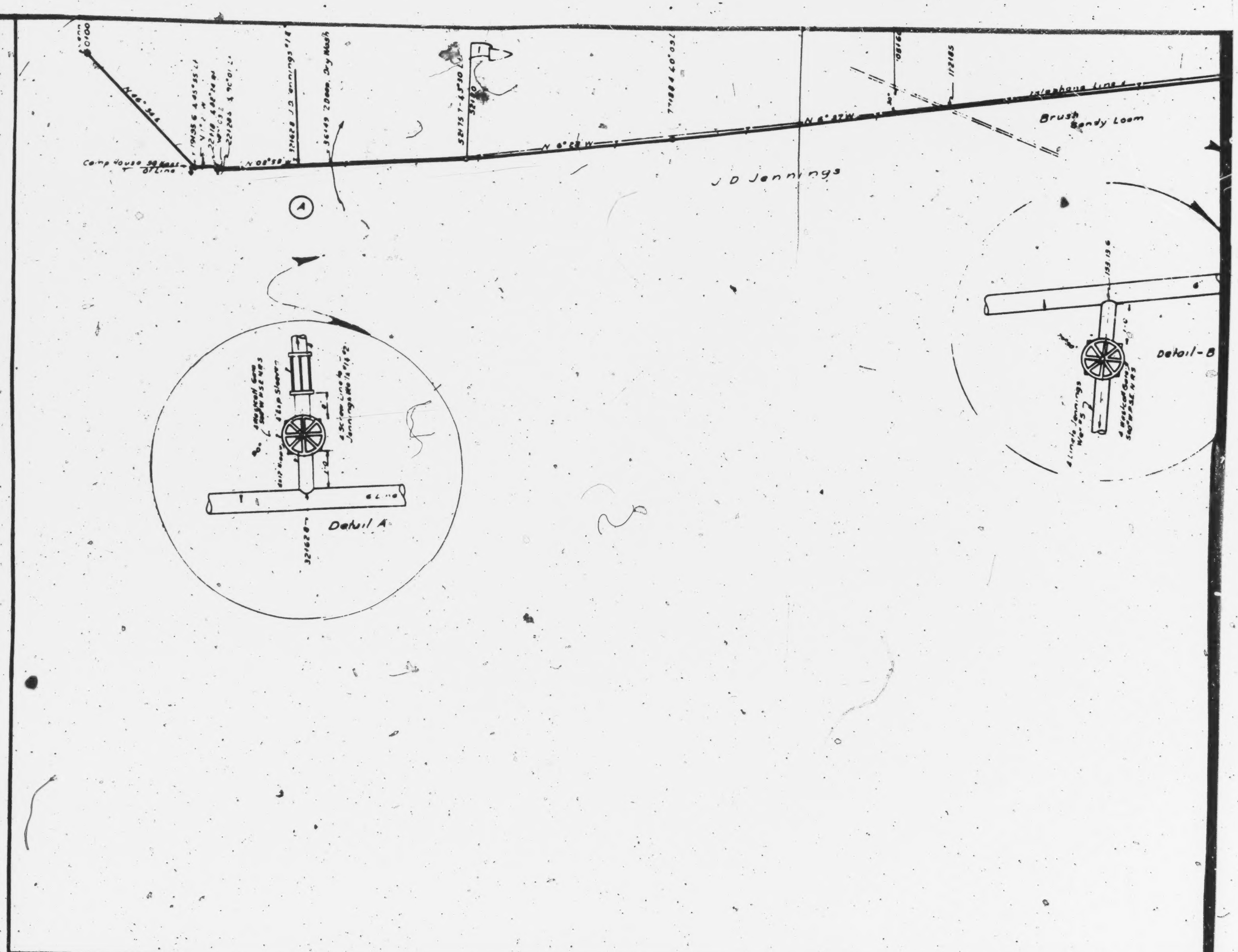
"CERRITO BLANCO"
J. M. PEREDA


N
208
Cuellar Bros Ranch
Brush - Sandy Loam
Brush
Sandy Loam
Stone
N 6° 37 W
Toribio
RY.

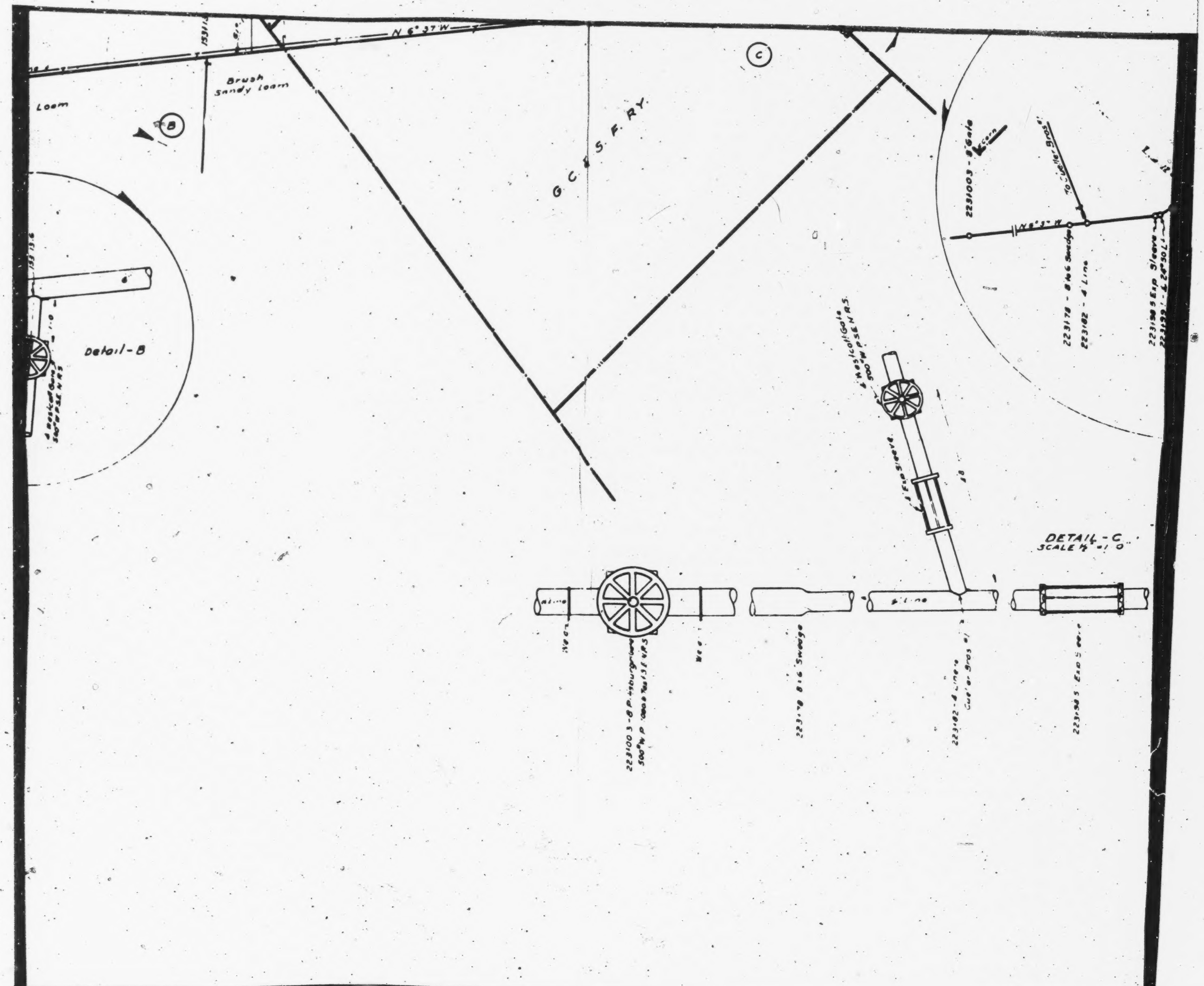


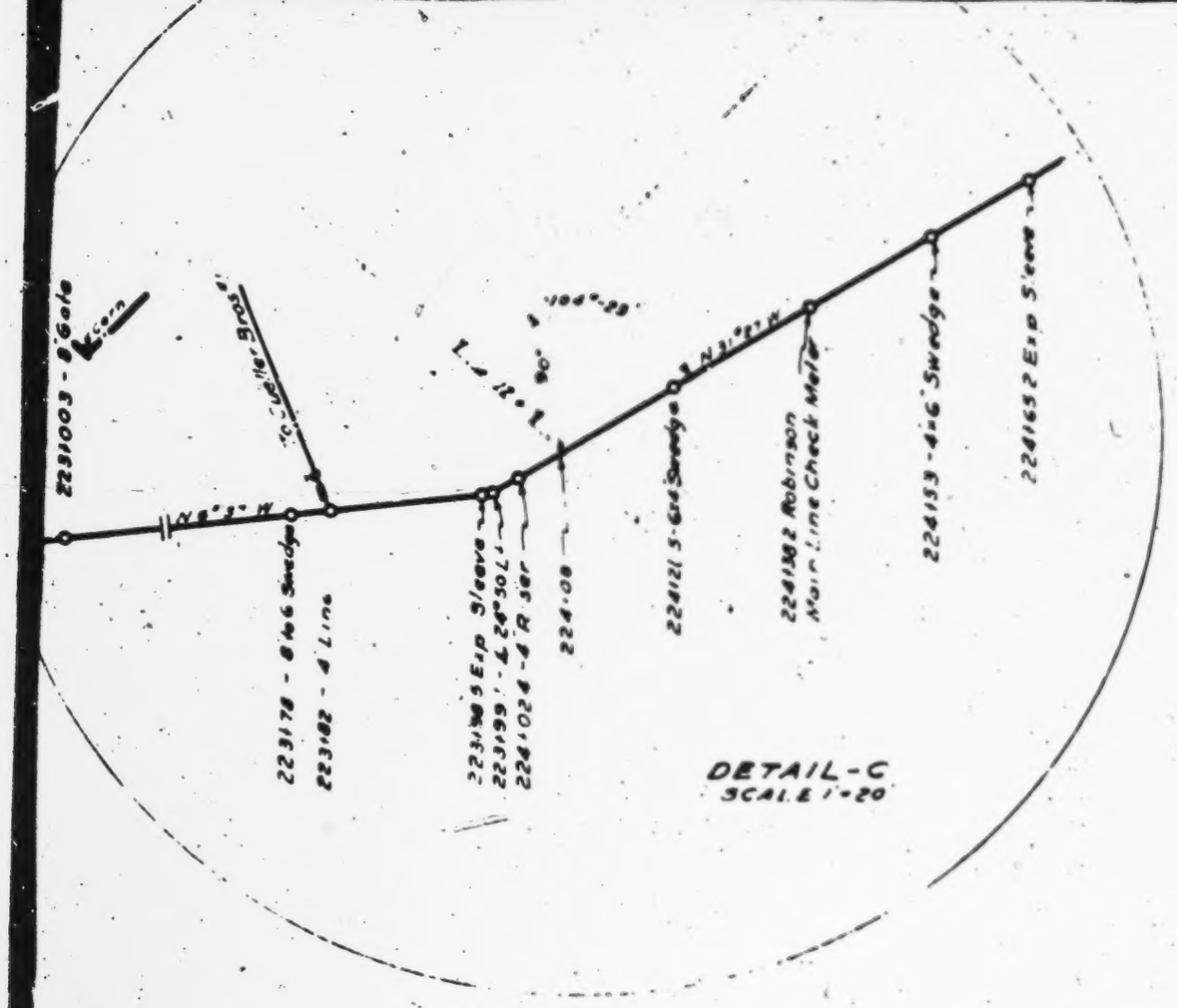


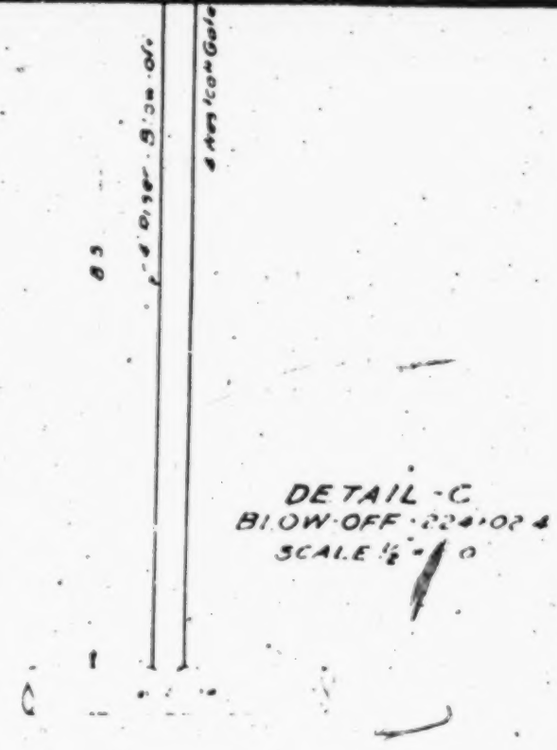
6 Westcott Gate
500° SE NR 3
DETAIL-D
J D Jenning Ranch
Toribio Garza
Dirt Tank
Toribio Garza

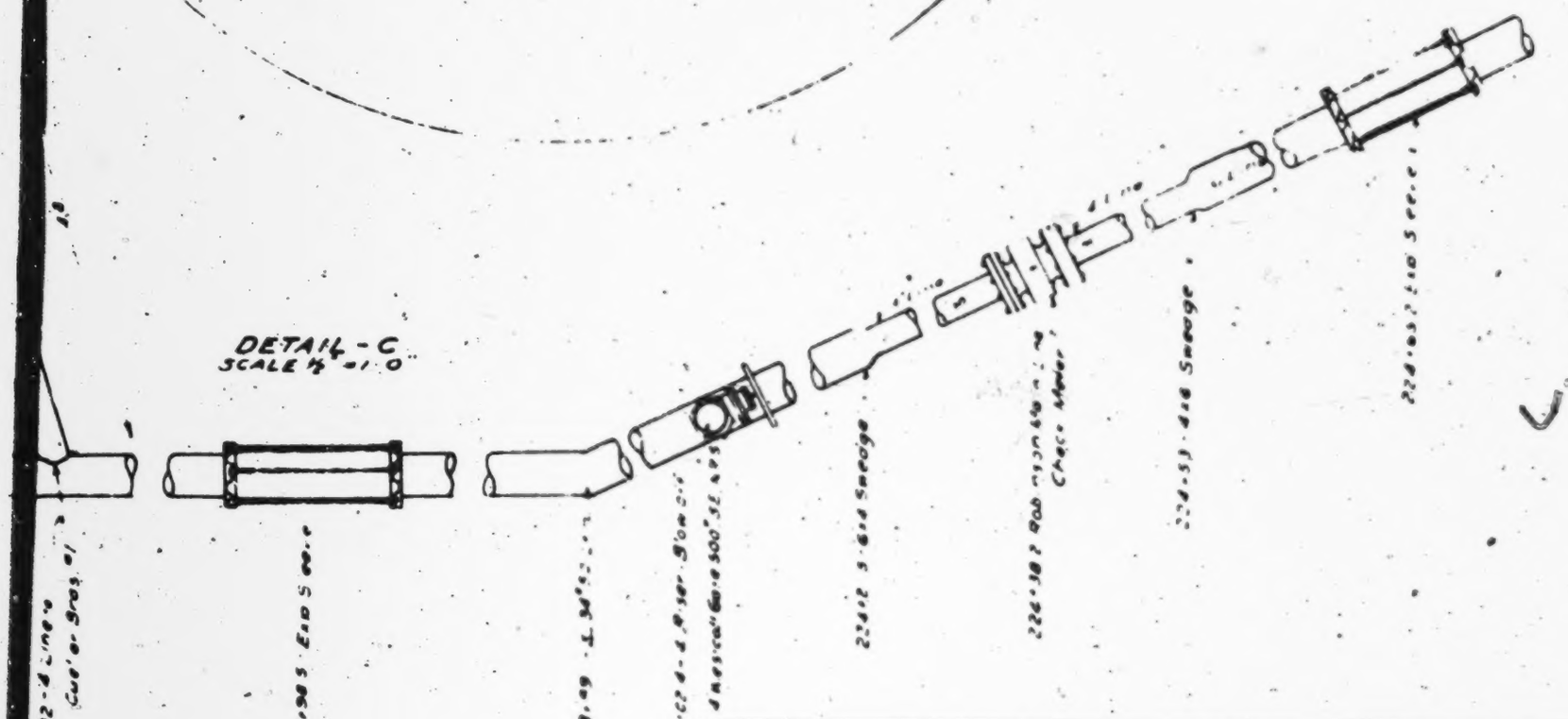


Camp House
Brush
Sandy Loam
J D Jennings
Detail-B
Detail A


N 6° 37' W
Brush
Sandy loam
Loam
B
C
G. C. & S. F. RY.
Detail-B
DETAIL-C
SCALE ½" = 1'-0"
To Cueller Bros.
223178 - 8 to 6 Swedge
223182 - 4 Line
223198.5 Exp Sleeve
223100.3 - 8 Pittsburgh Gate
500# W.P. 1000# Test 3 E.N.R.S.
223178 - 8 to 6 Swedge
223182 - 4 Line
Cueller Bros #1
223198.5 Exp Sleeve



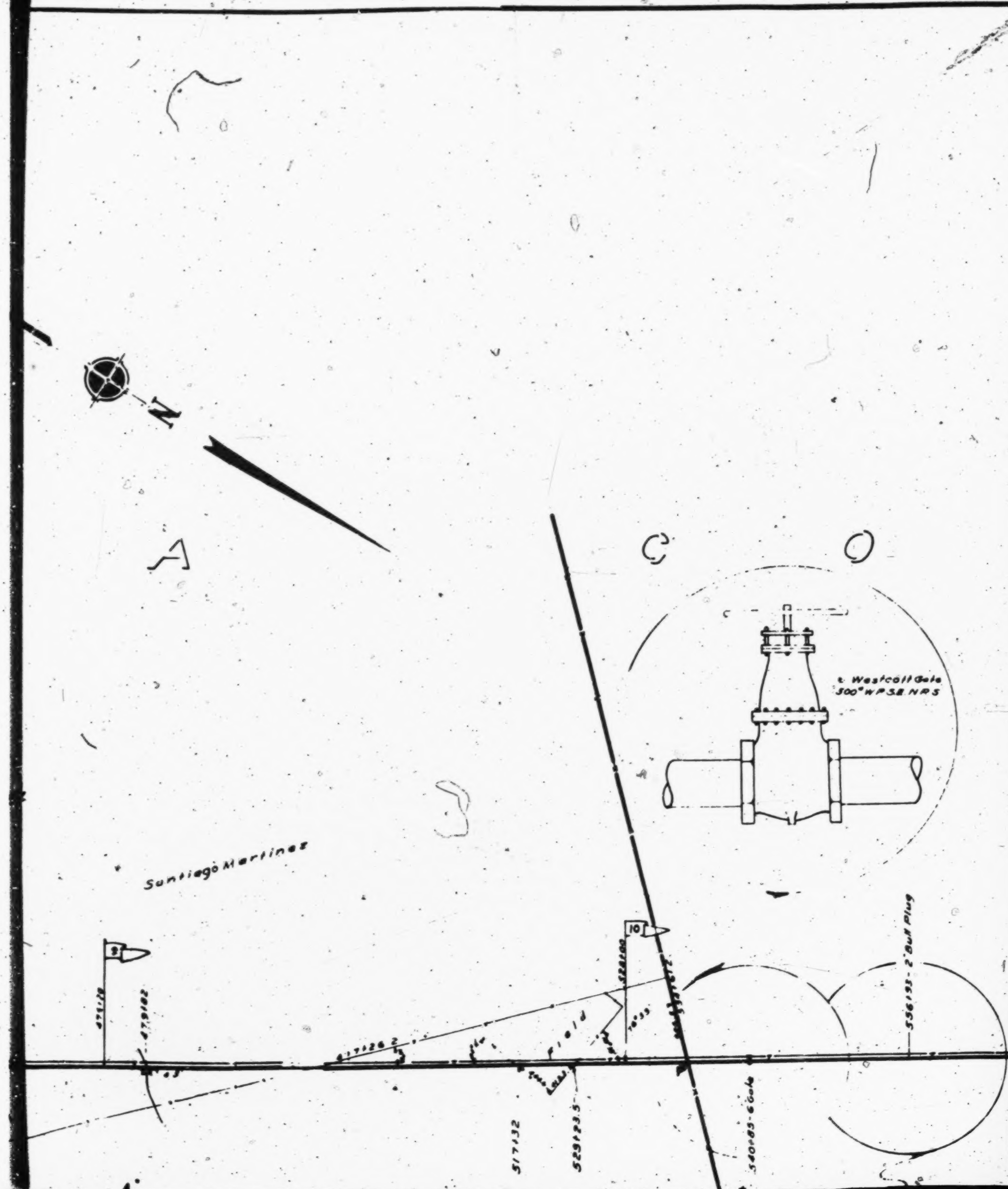




6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

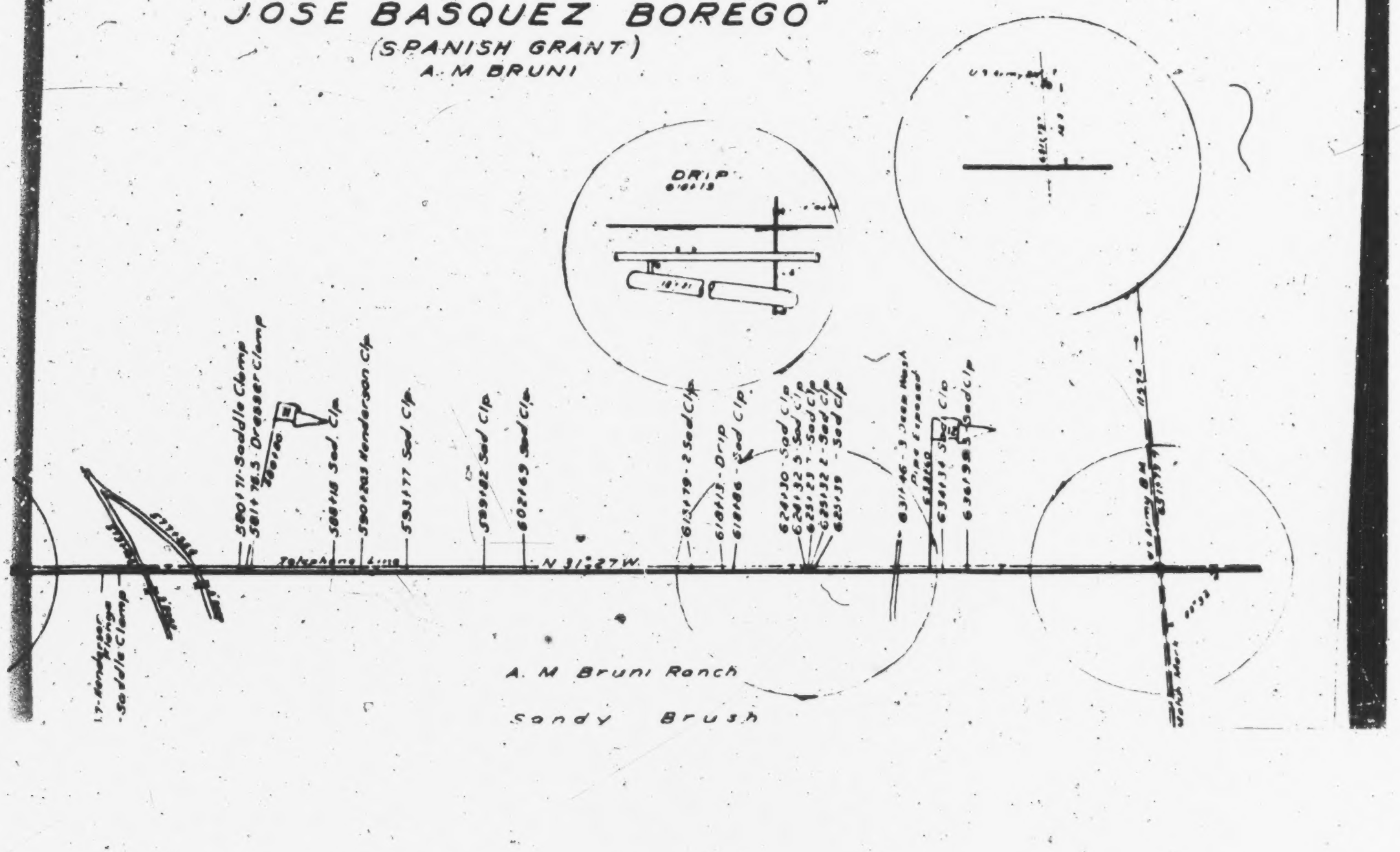
Drwg No Sheet No 1 Sheets -		Dr by - C Y Tr by - C Y Chk by
Scale 1" = 1000'	APPROVED BY	Date

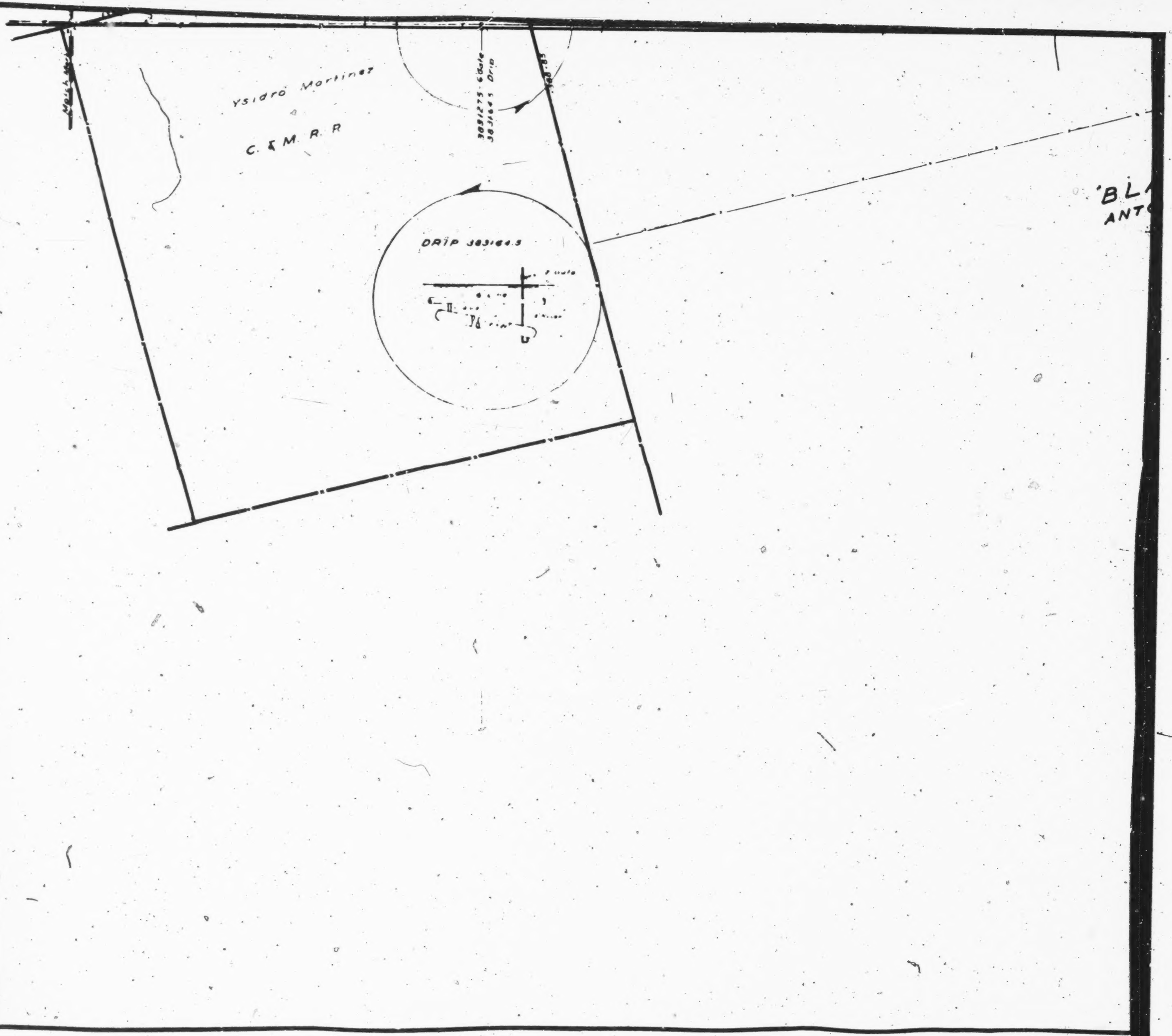
Z A P A T
"BLAS MARIA"
ANTONIO M. GUITERREZ
205
Telephone Line
Ysidro Martinez
Saddle Clamp
Dry Wash 2 Deep
Dry Wash 3 Deep


N
A
C
O
Westcott Gate
500' W.P.S.E. N.R.S.
Santiago Martinez
Field
517+32
529+23.5
540+83 - 6" Gate
556+93 - 2" Bull Plug

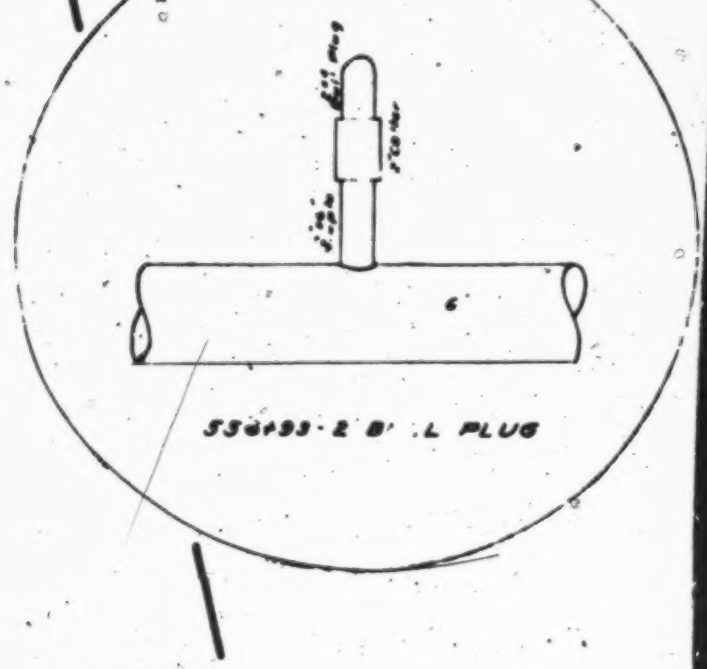
U N I T Y

"JOSE BASQUEZ BOREGO"
(SPANISH GRANT)
A. M BRUNI



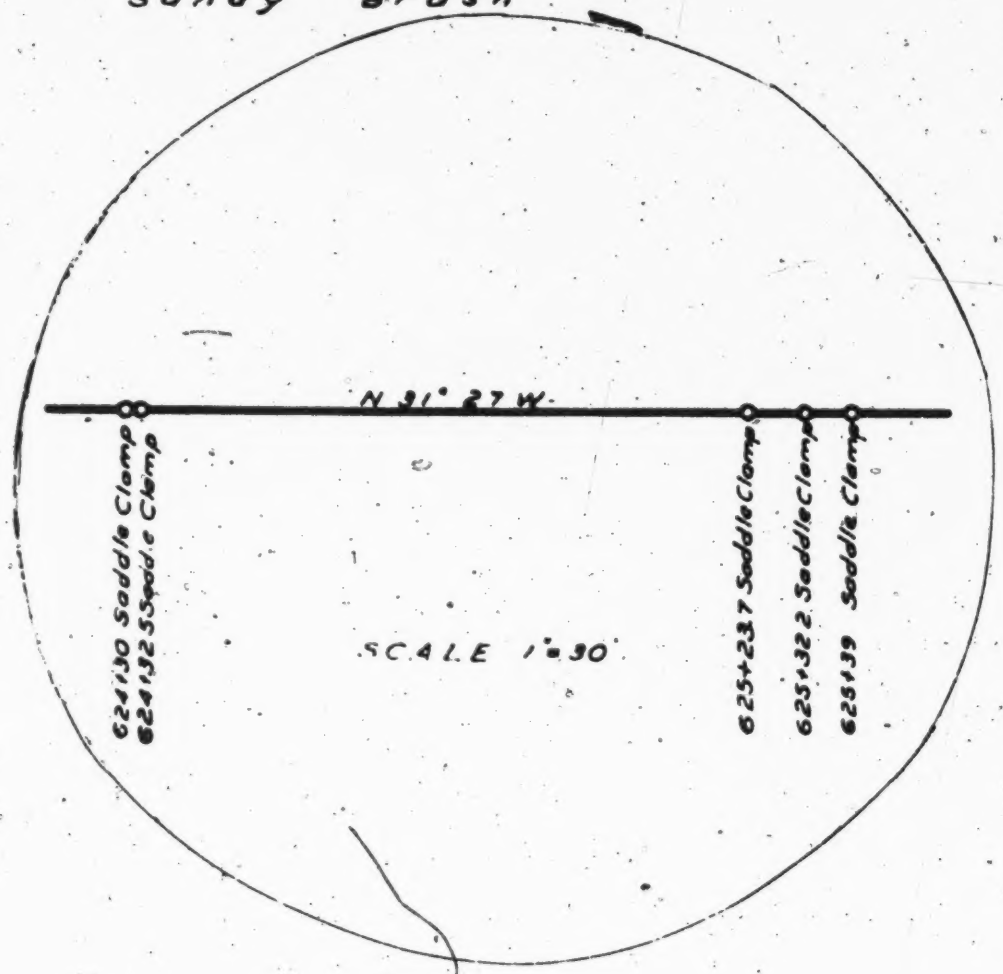

Ysidro Martinez
C. & M. R. R
3831275 - 6 Gale
3831645 Drip
DRIP 383164.5
BL
ANT

BLAS MARIA
ANTONIO M. GUITERREZ
Santiago Martinez



A. M Bruni Ranch

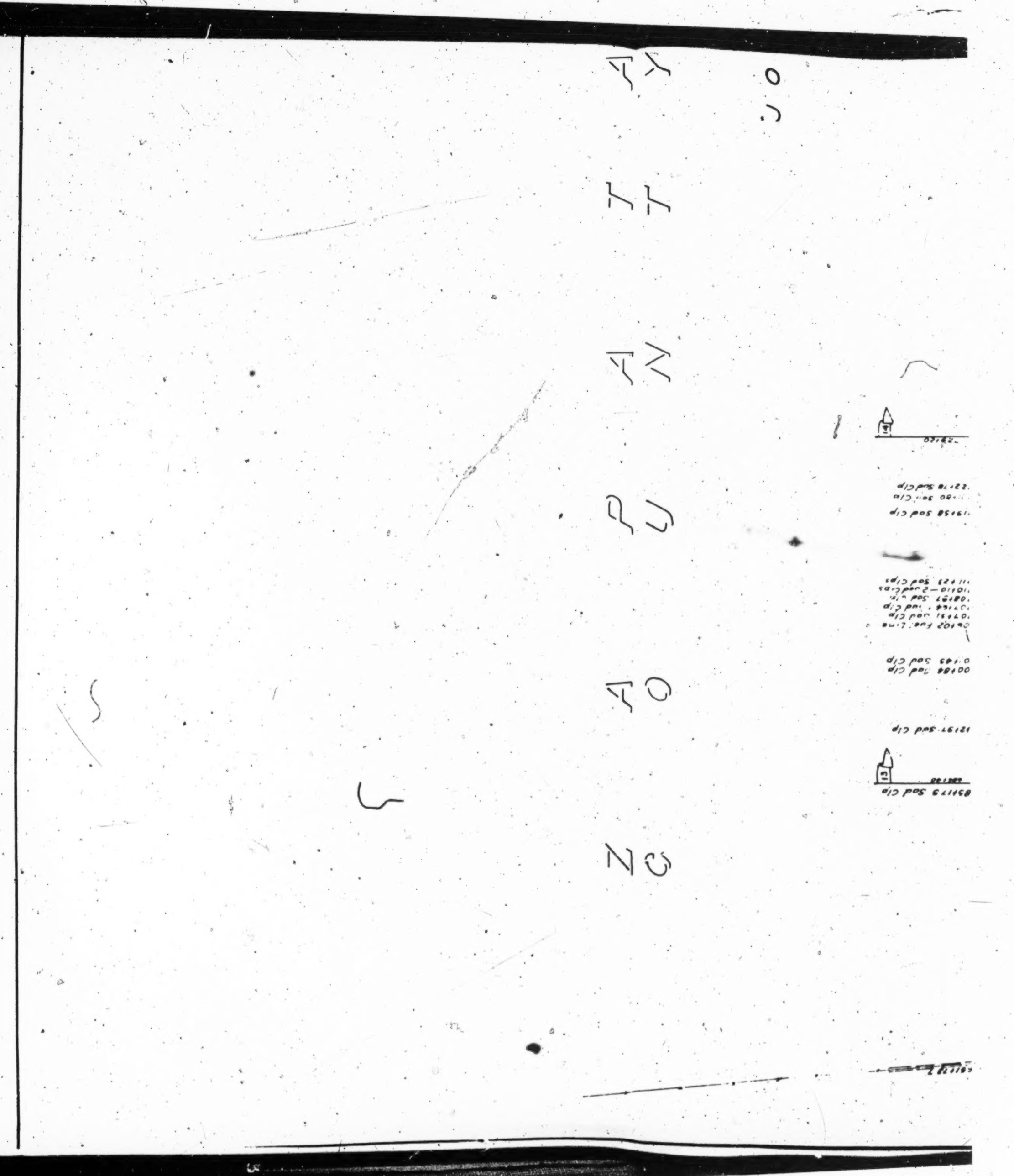
Sandy Brush



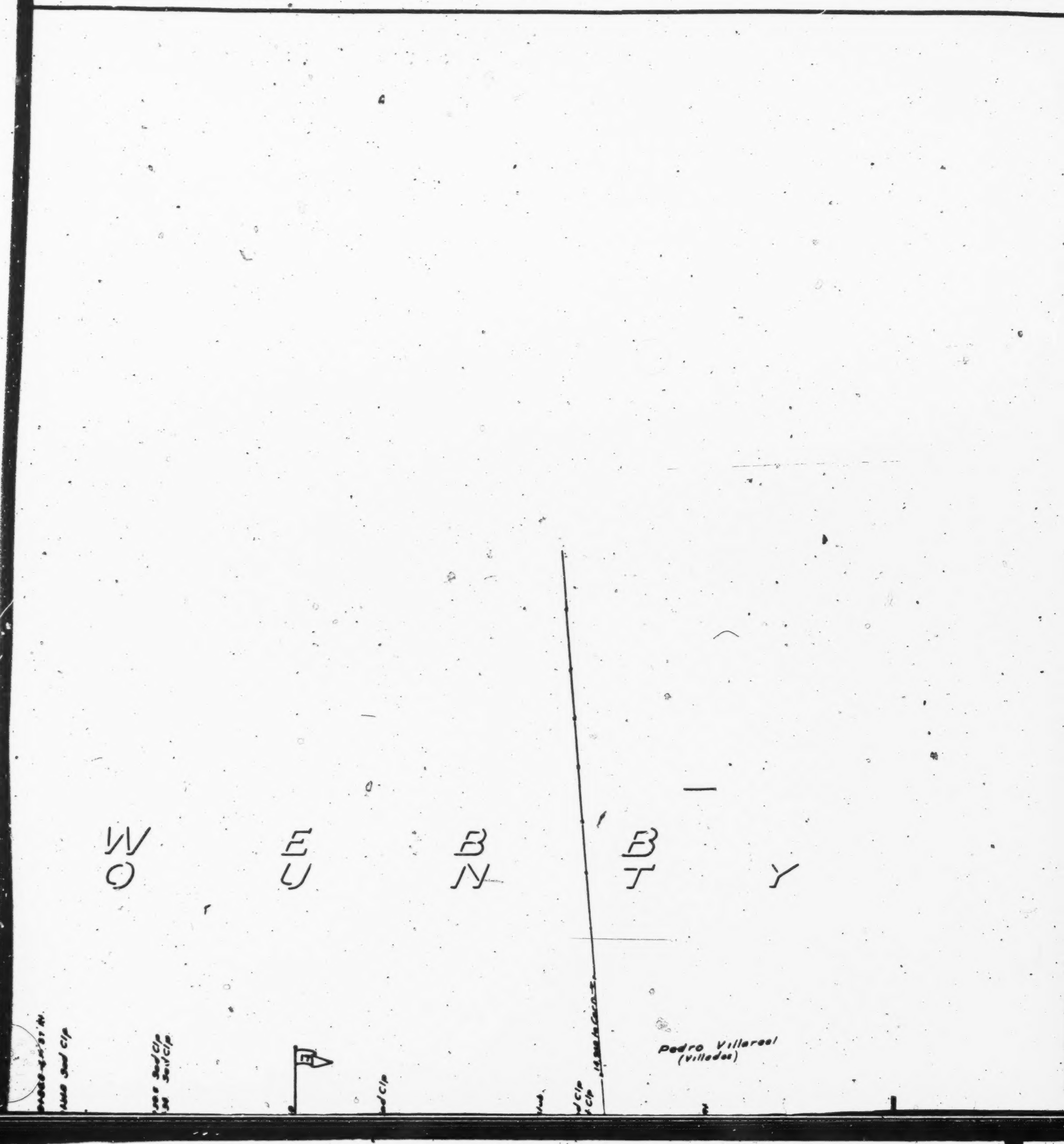
6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

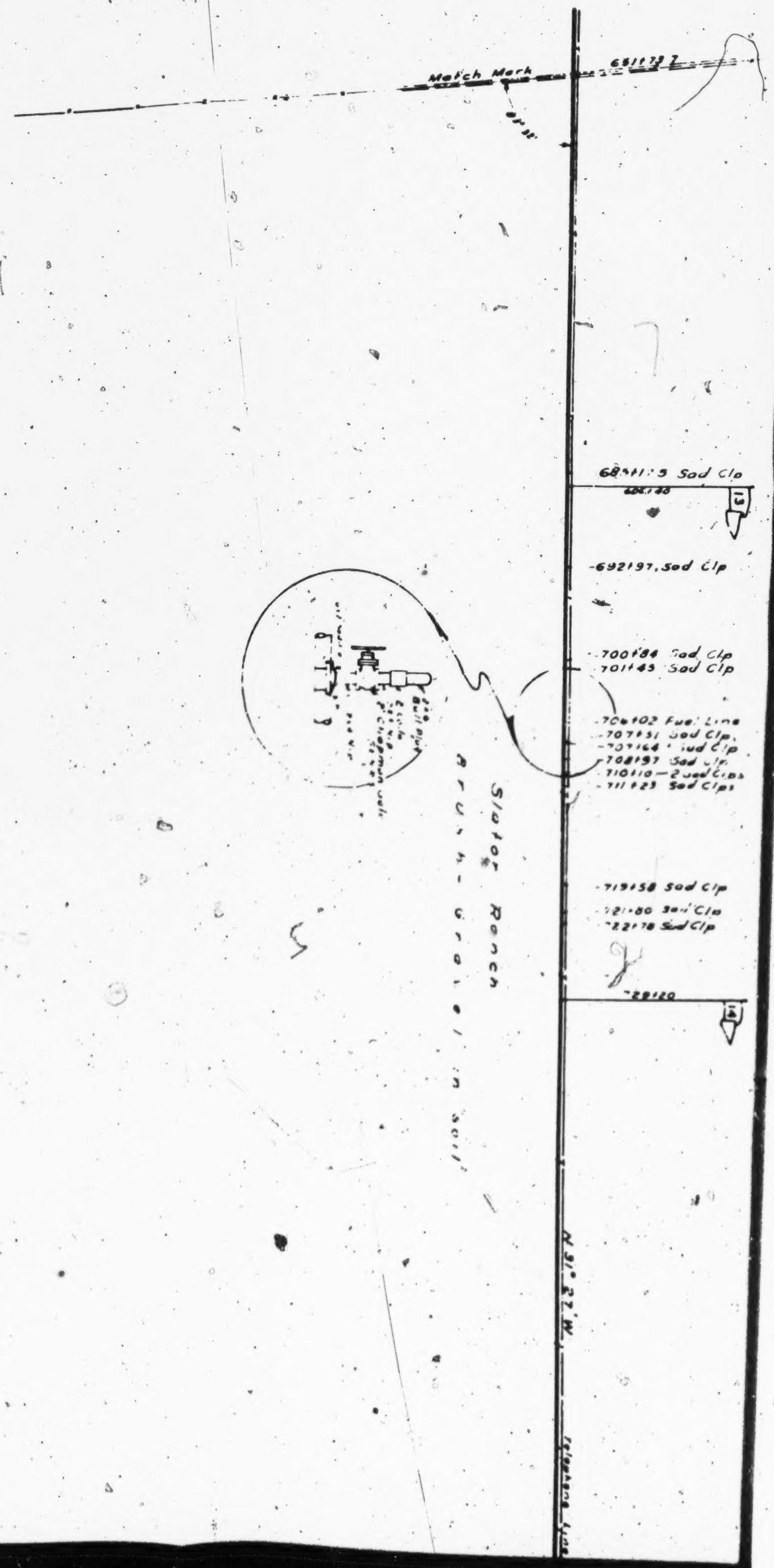
Drwg No. Sheet No. 2 Sheets-		Dr by - C.Y Tr by - C.Y Chk by-
Scale 1"=1000	APPROVED BY-	Date

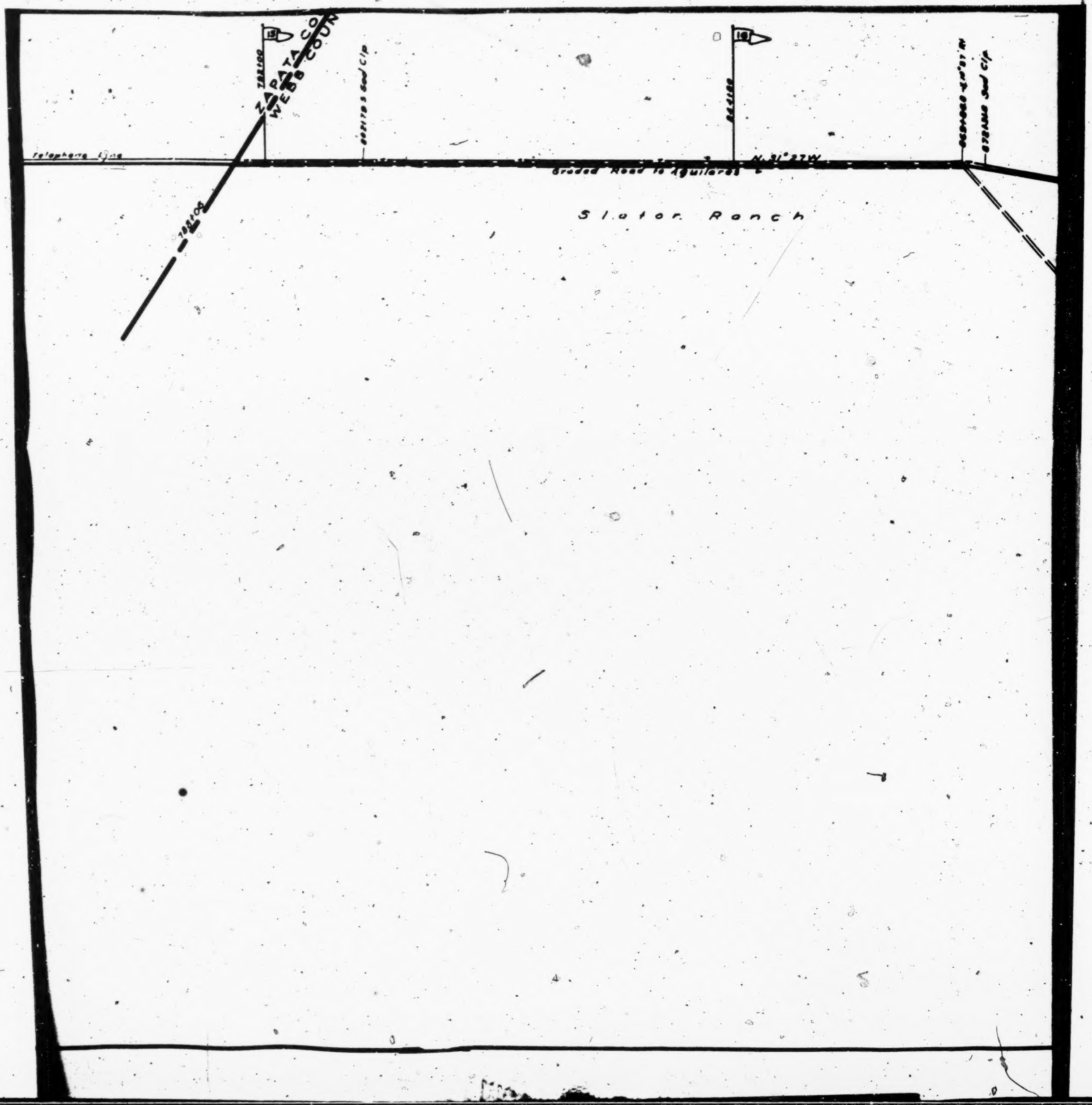
2468

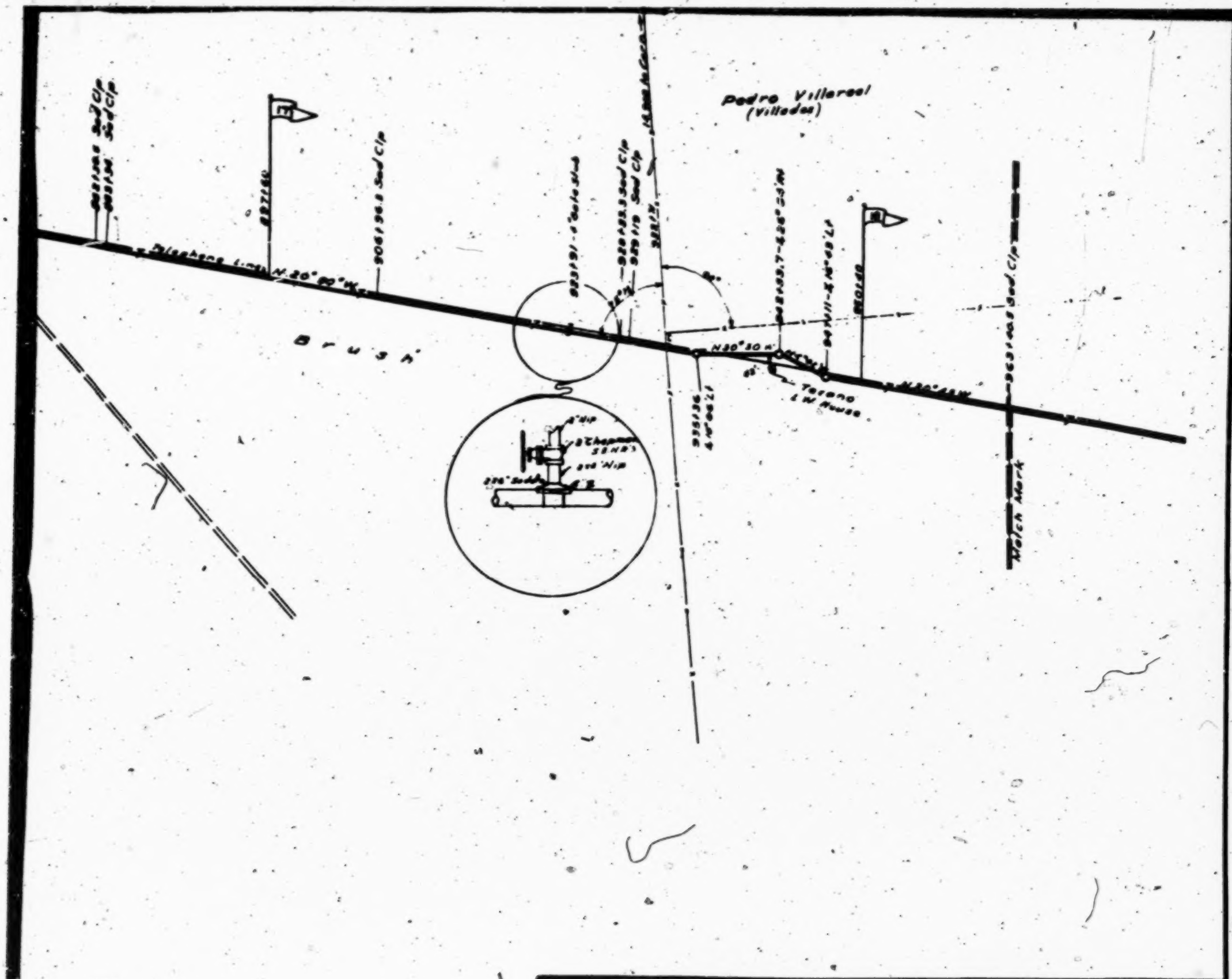


N
JOSE BASQUEZ BOREGO
ZAPATA COUNTY
WEBB COUNTY


W E B B
O U N T Y
Pedro Villareal
(Villadas)


Match Mark
Sad Clp
13
692+97, Sad Clp
700+84 Sad Clp
701+45 Sad Clp
706+02 Fuel Line
707+31 Sad Clp
708+97 Sad Clp
710+10 — 2 Sad Clps
711+23 Sad Clps
719+58 Sad Clp
721+80 Sad Clp
722+78 Sad Clp
729+20
14
Slator Ranch
N 31° 27' W
Telephone Line

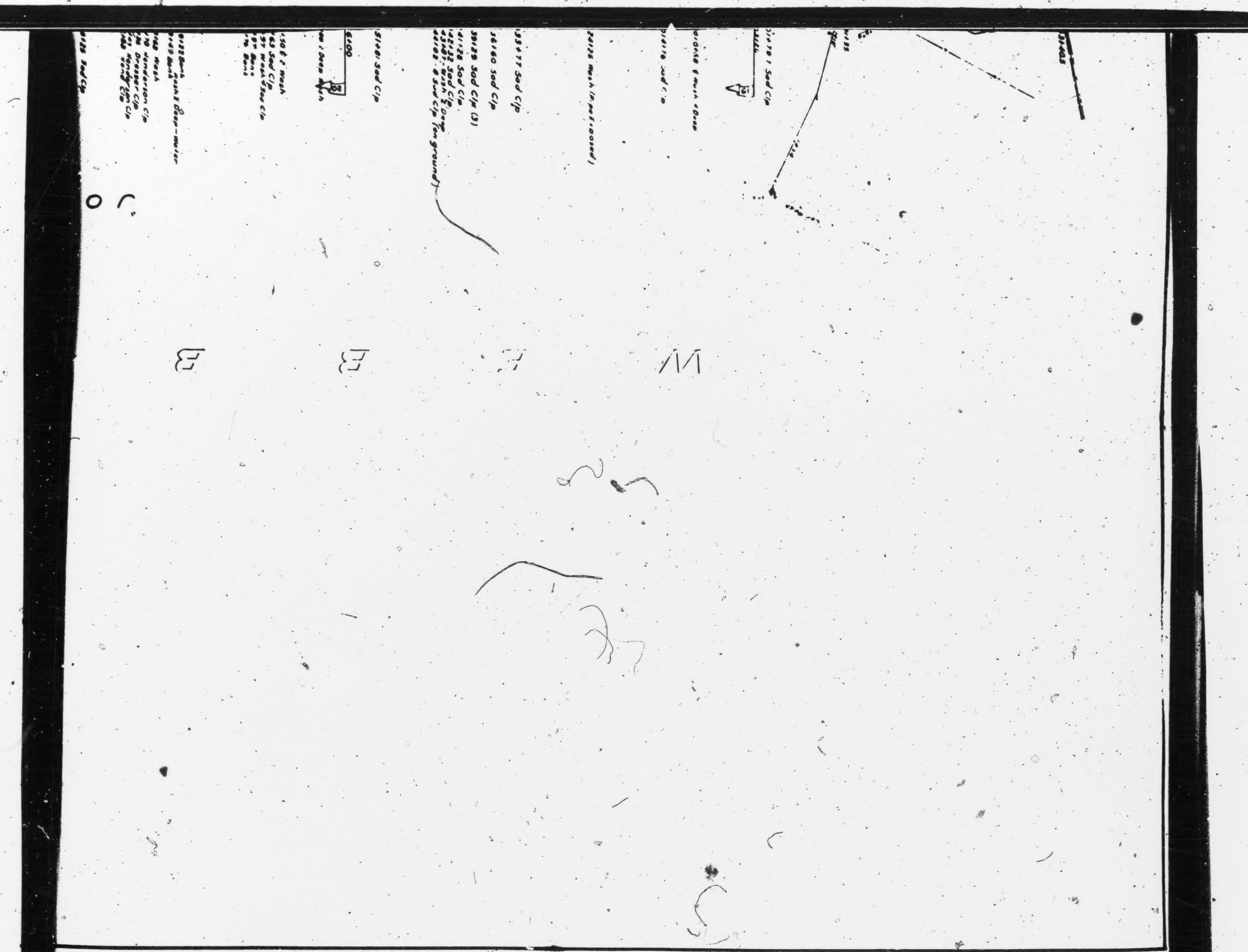

ZAPATA CO
WEBB COUN
15
16
Telephone Line
N. 31°27W
Graded Road to Aguilares
Slator Ranch

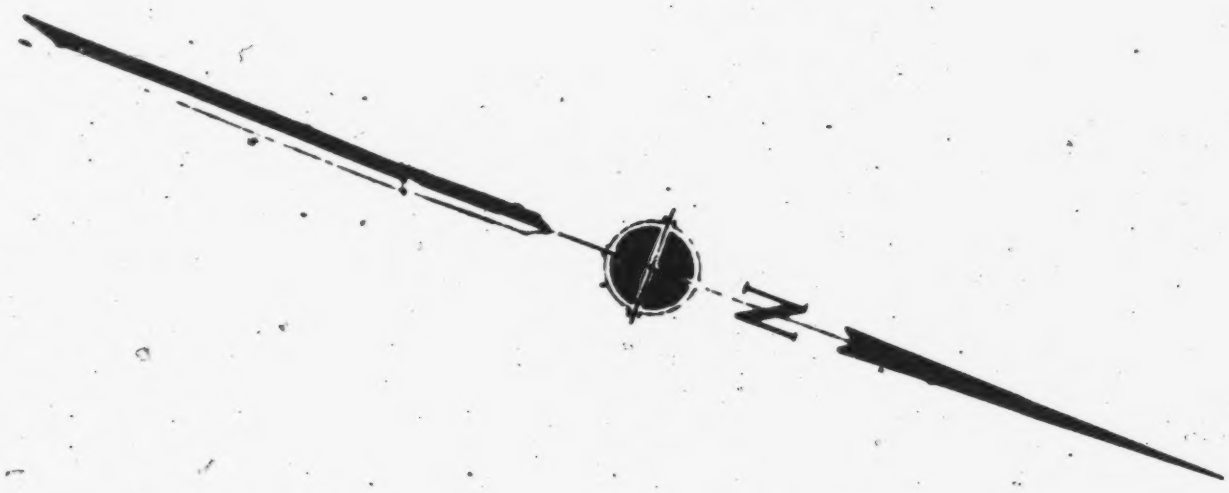


6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

Drwg No Sheet No.3 Sheets		Dr by- C.Y. Tr. by- C.Y. Chk. by-
Scale: 1"=1000'	APPROVED BY-	Date:

2469





JOSE BASQUEZ BOREGO

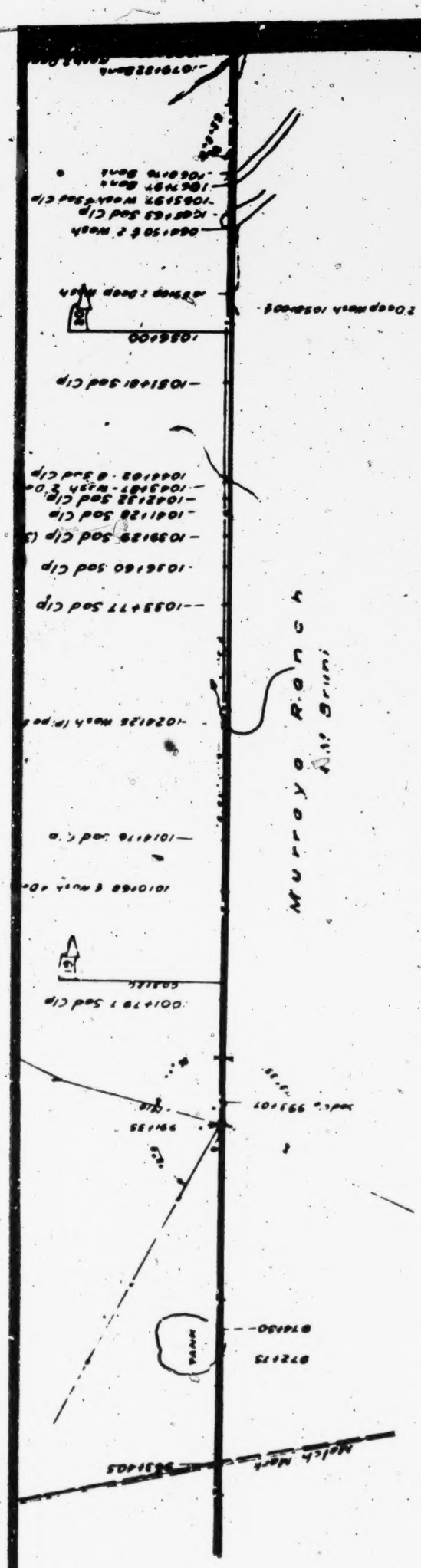
A M. Bruni

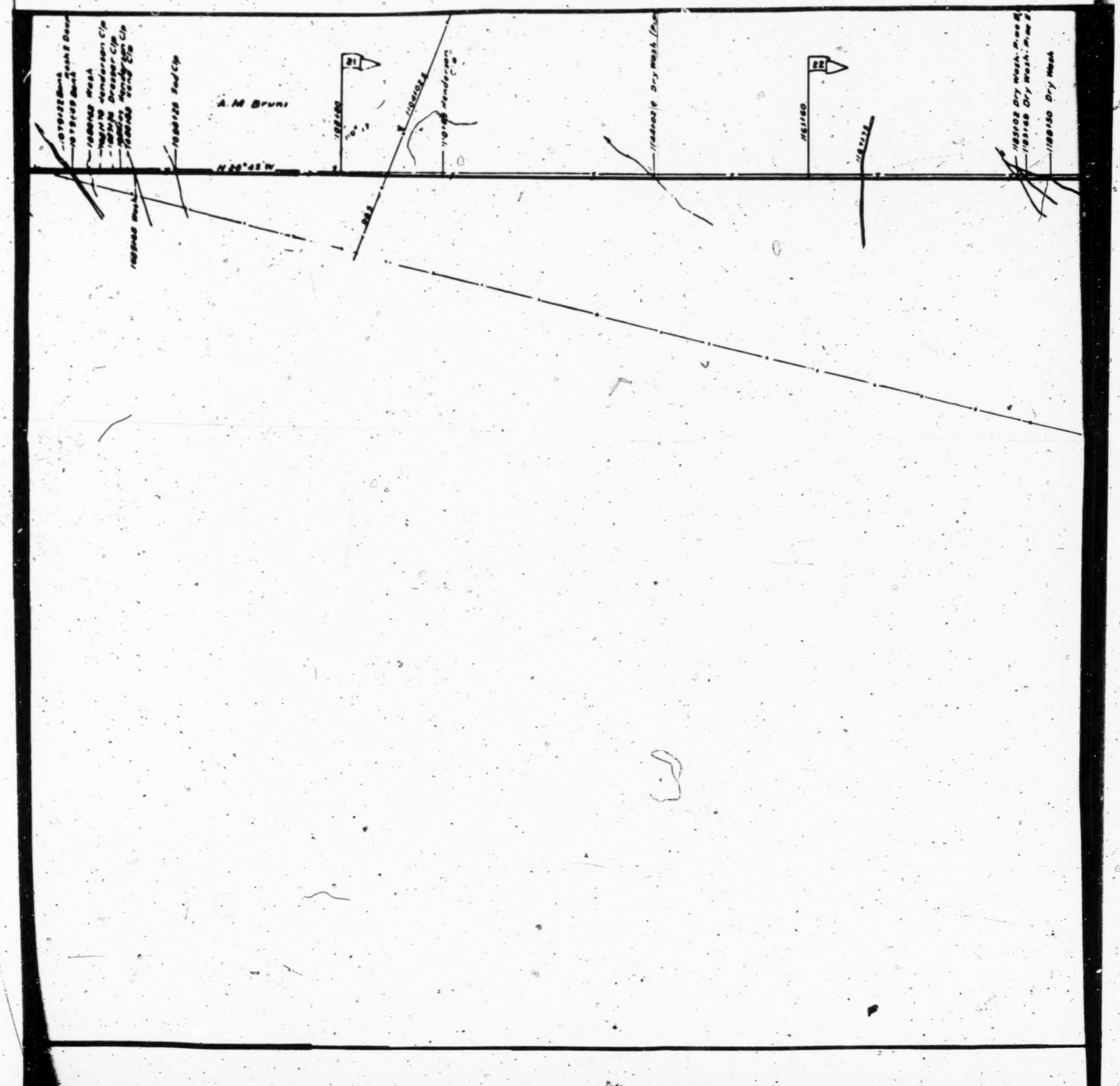
A. M Bruni

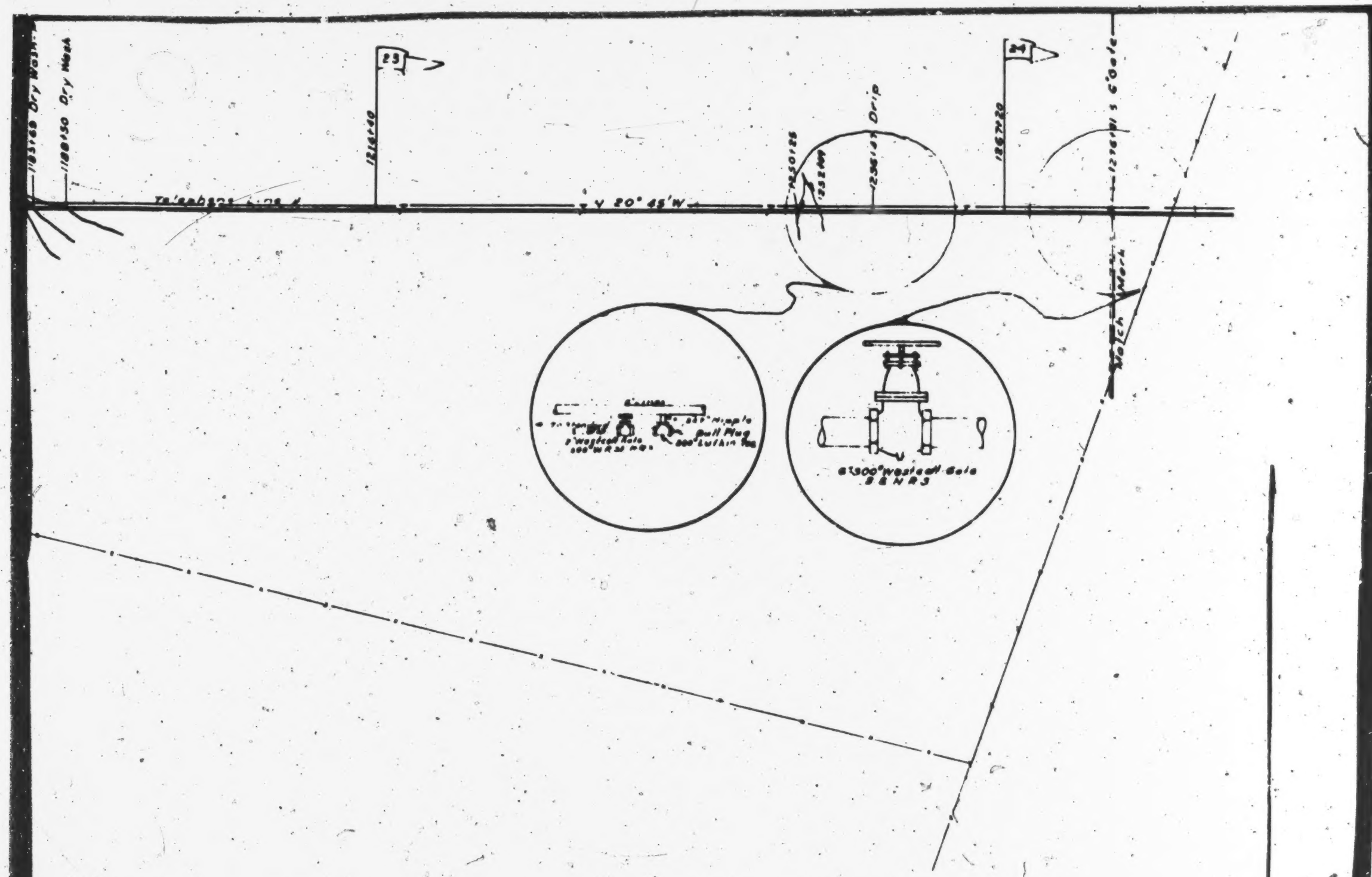
21

22

Dry Wash Flood Channel
Dry Wash Flood Channel
Dry Wash


Murroyo Ranch
A.M. Bruni
TANK
Match Mark

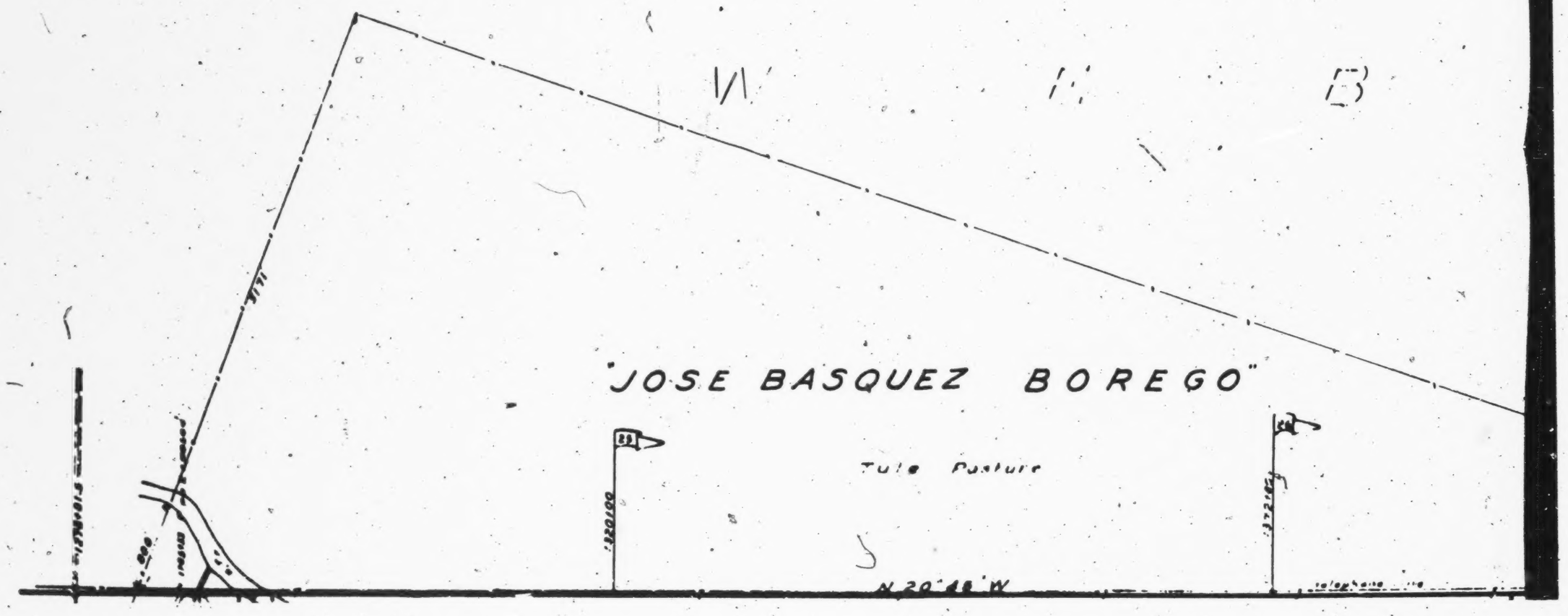

A. M Bruni
N 89°-45' W
21
22
Dry Wash
Dry Wash
Dry Wash

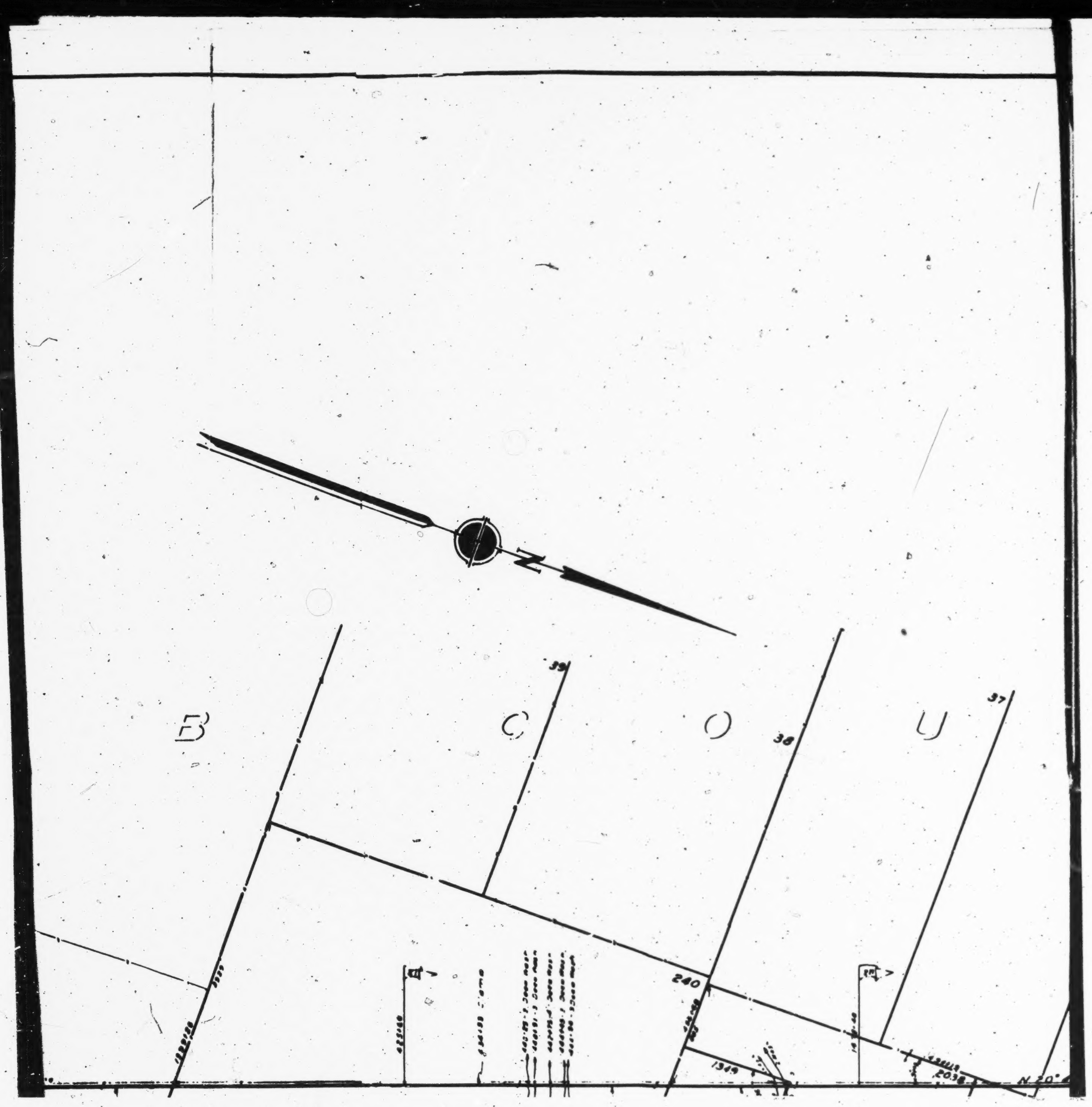


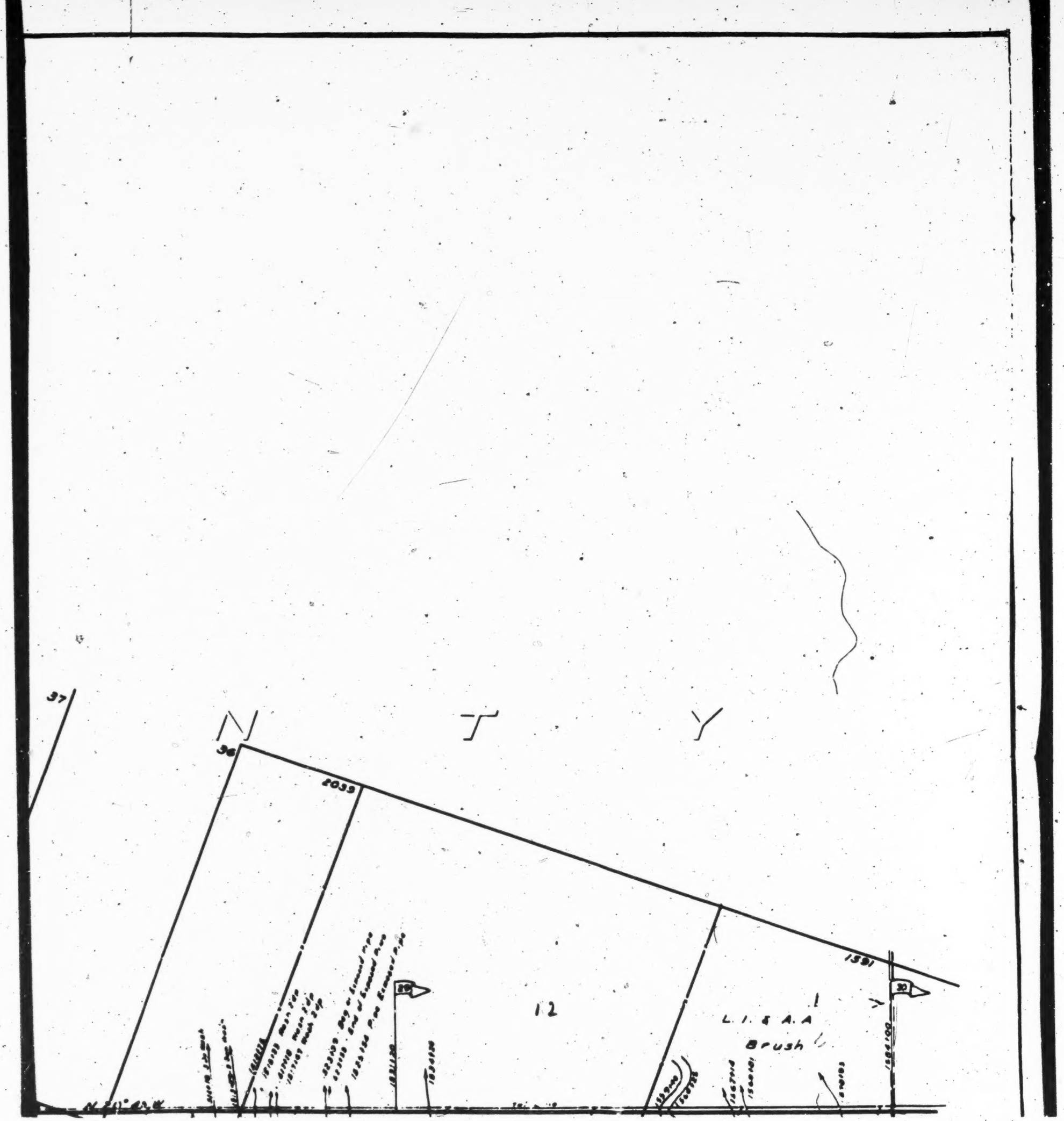
6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

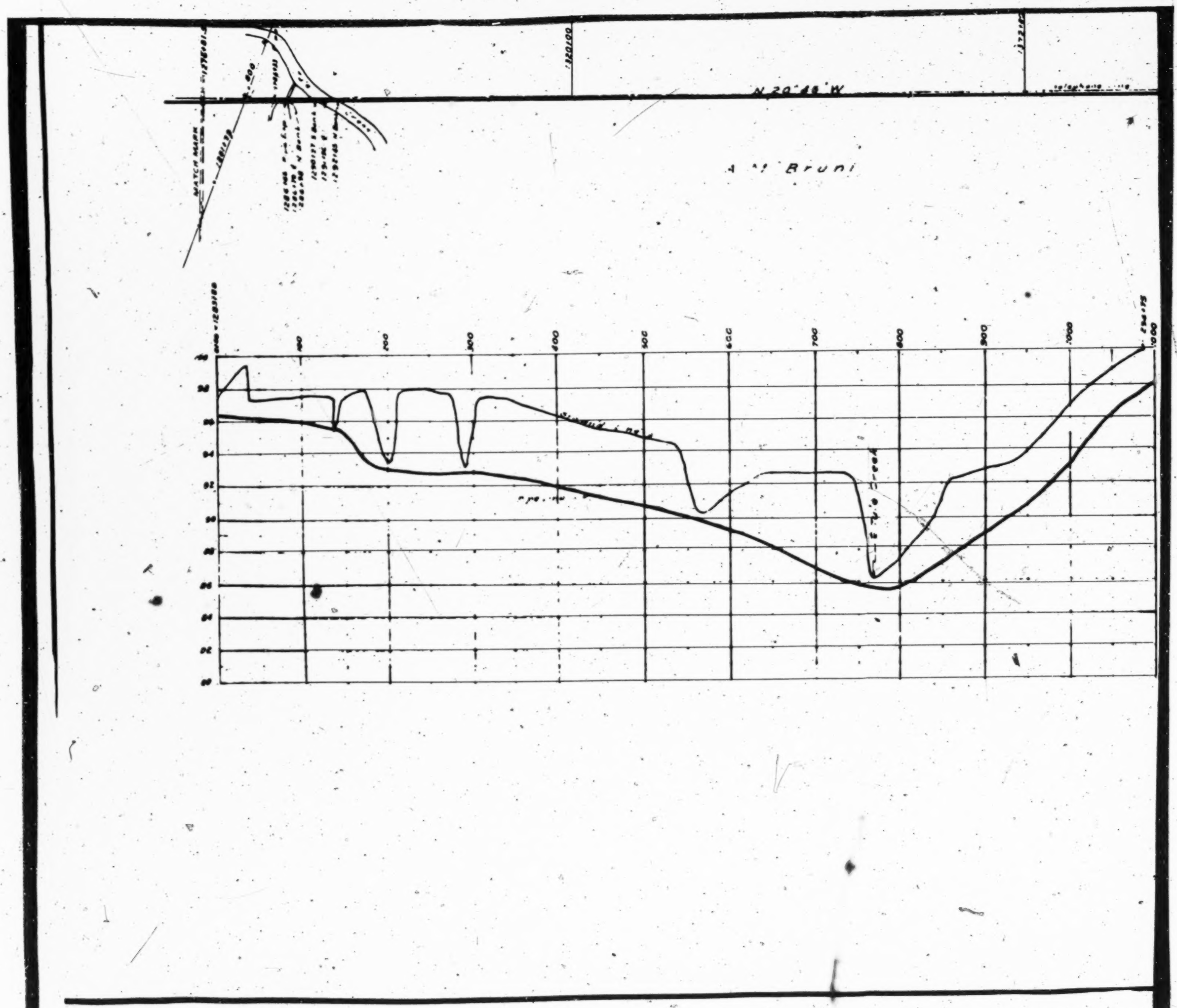
Drwg No Sheet No. 4 Sheets		Dr by - C Y Tr. by - C Y Chk by.
Scale 1" = 1000'	APPROVED BY.	Date

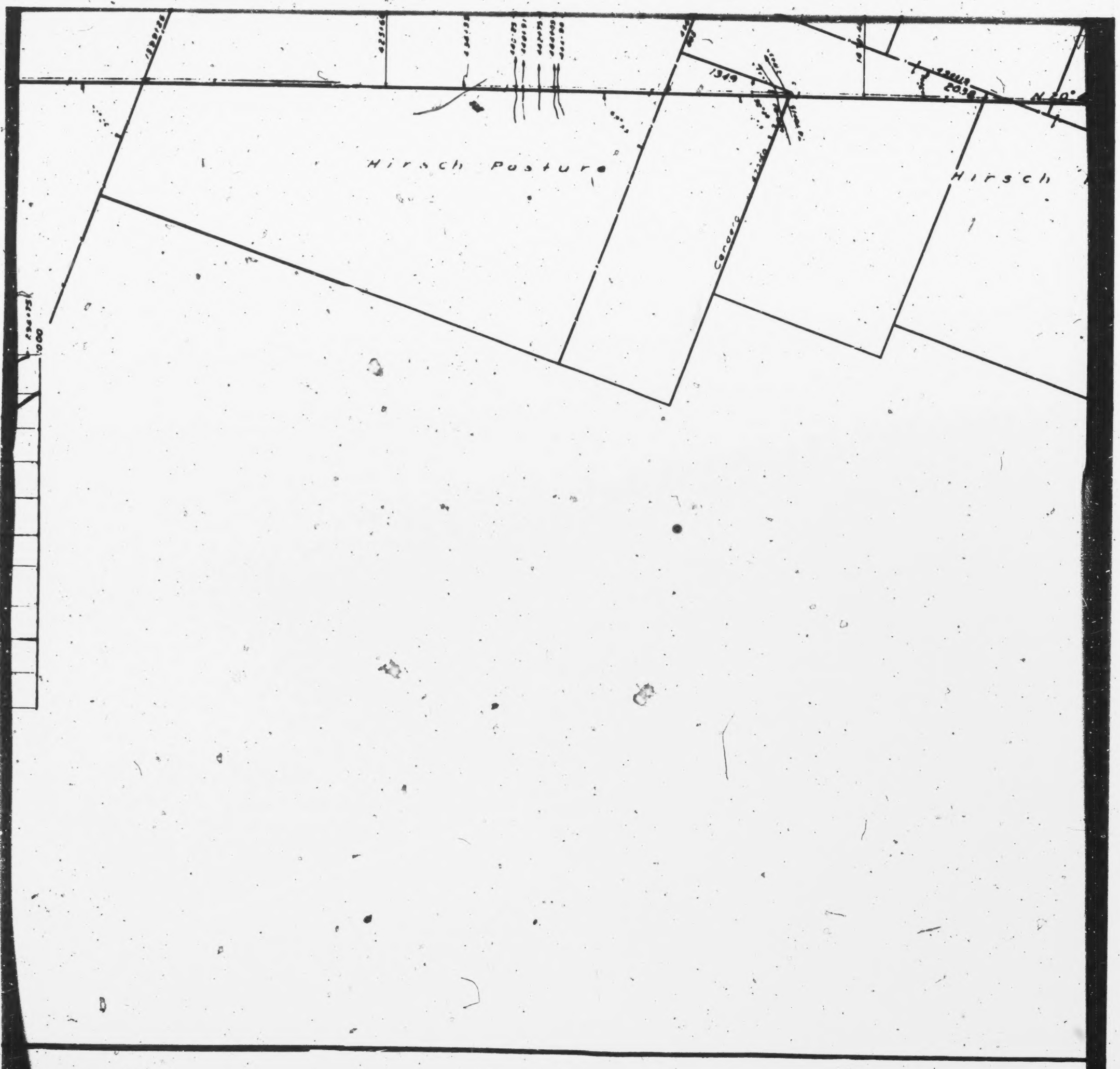
2470

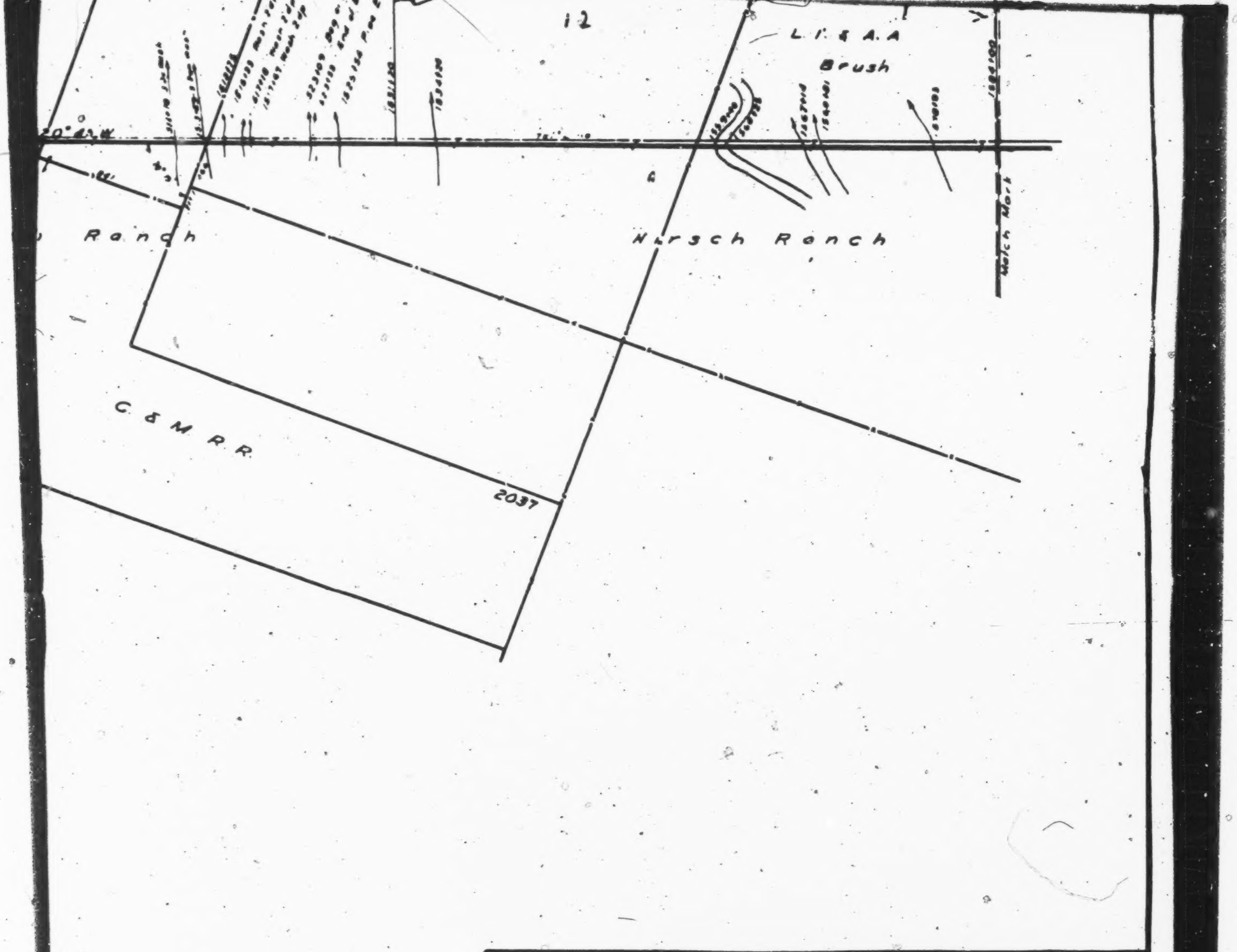

"JOSE BASQUEZ BOREGO"
Tule Pasture
N 20°48' W


B
C
O
U
39
38
37
240
1349
2038
N 20°


37
36
2033
1591
20
20
12
L. I. & A. A
Brush


N 20° 48' W
A° Bruni


Hirsch Pasture
Hirsch
1349
2038
N 20°
Cenaero



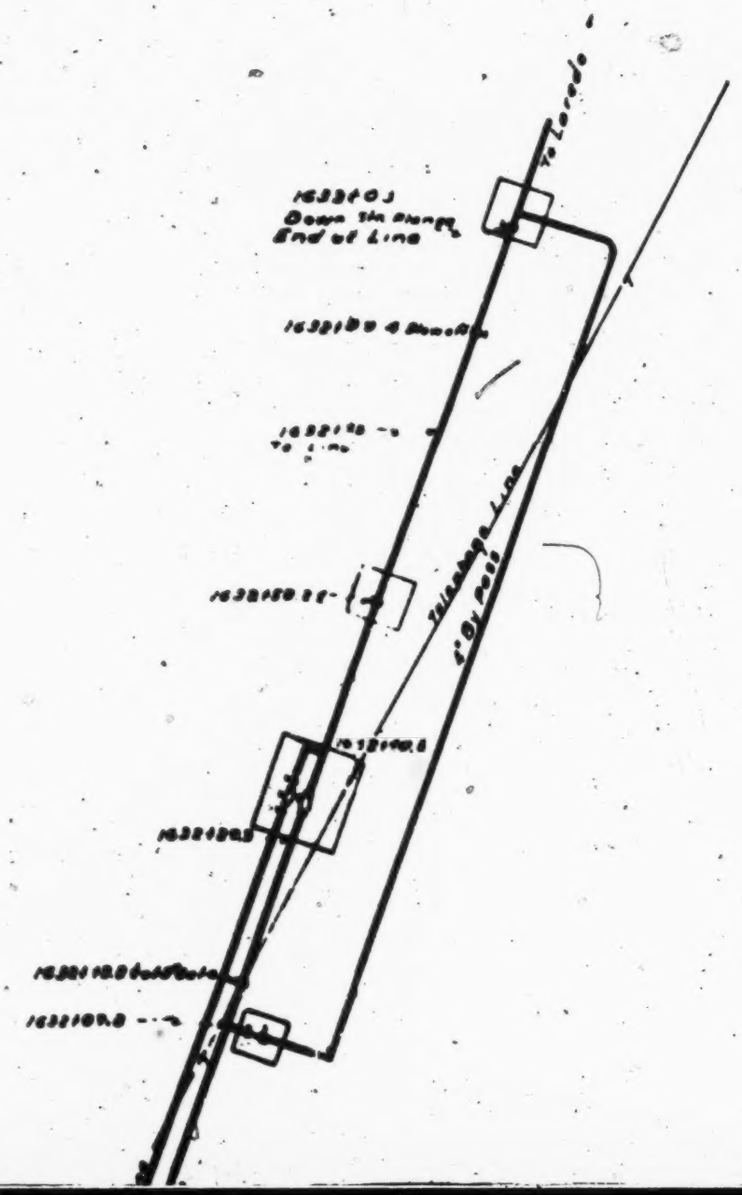
6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

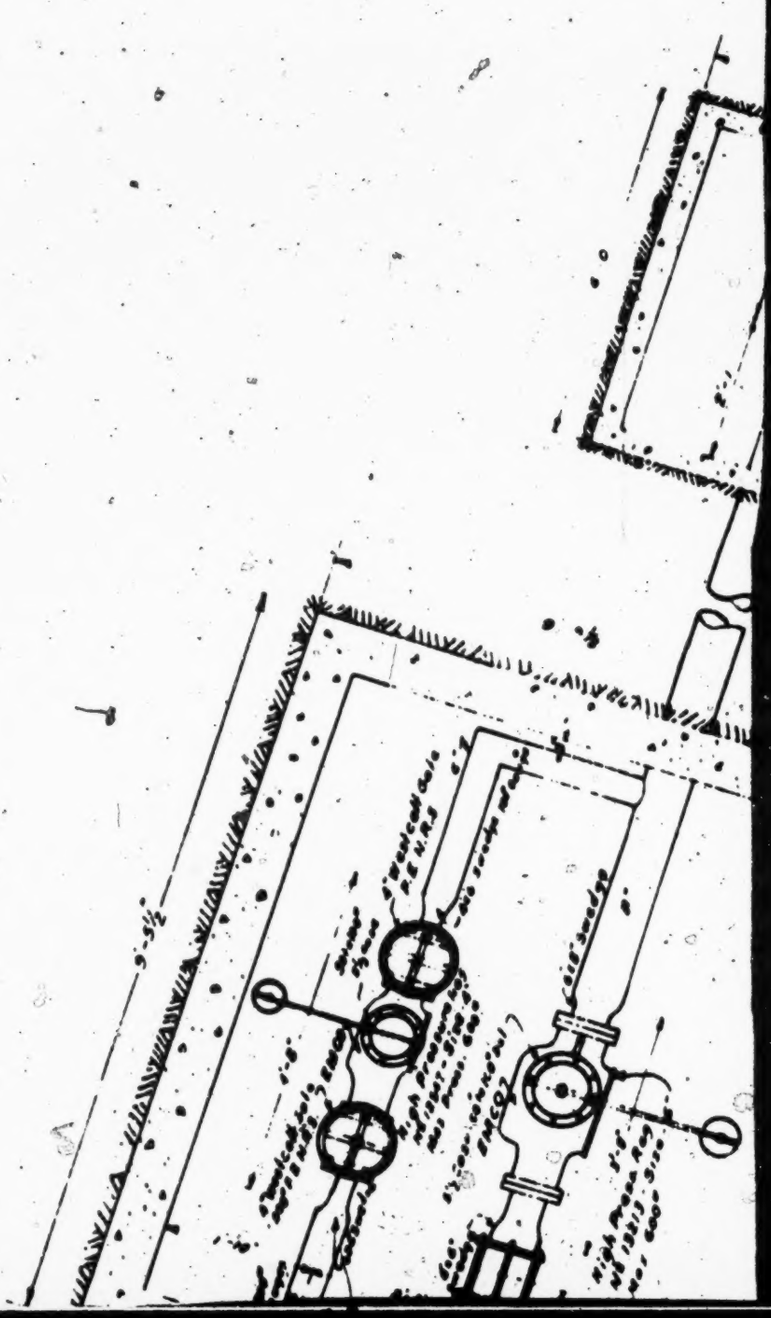
Drwg No Sheet No 5 Sheets		Dr by - C.Y. Tr by - C.Y. Chk by
Scale 1" = 1000	APPROVED BY-	Date

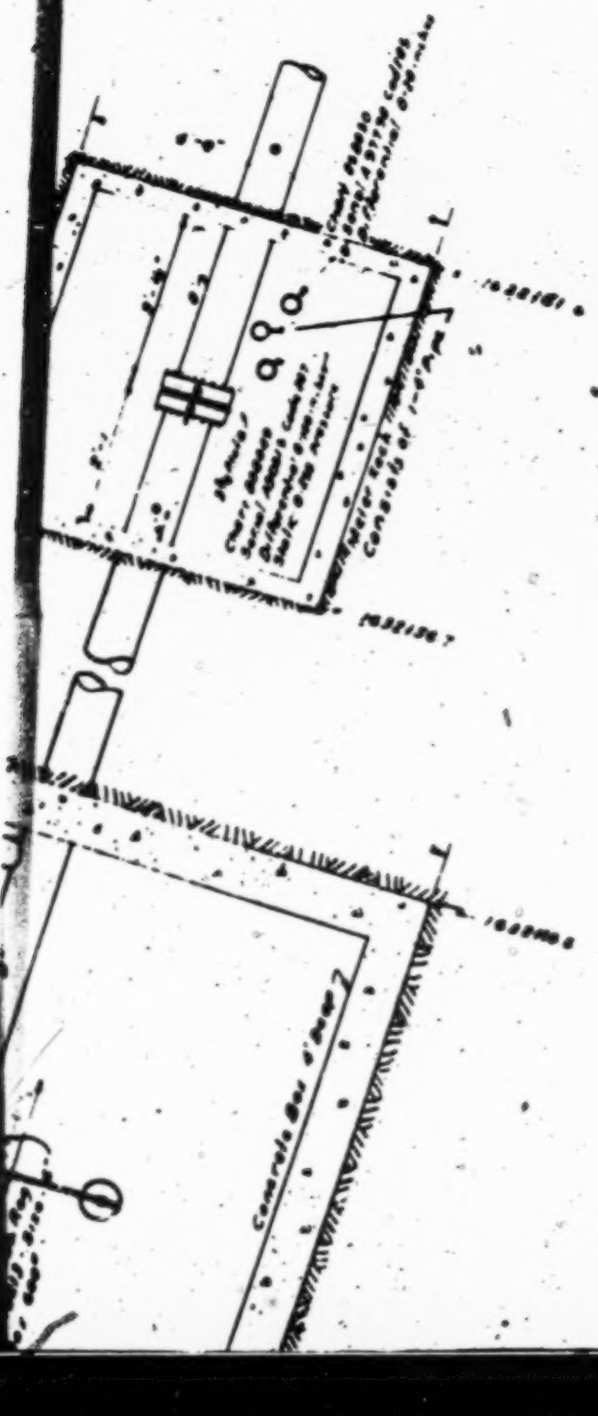
2471

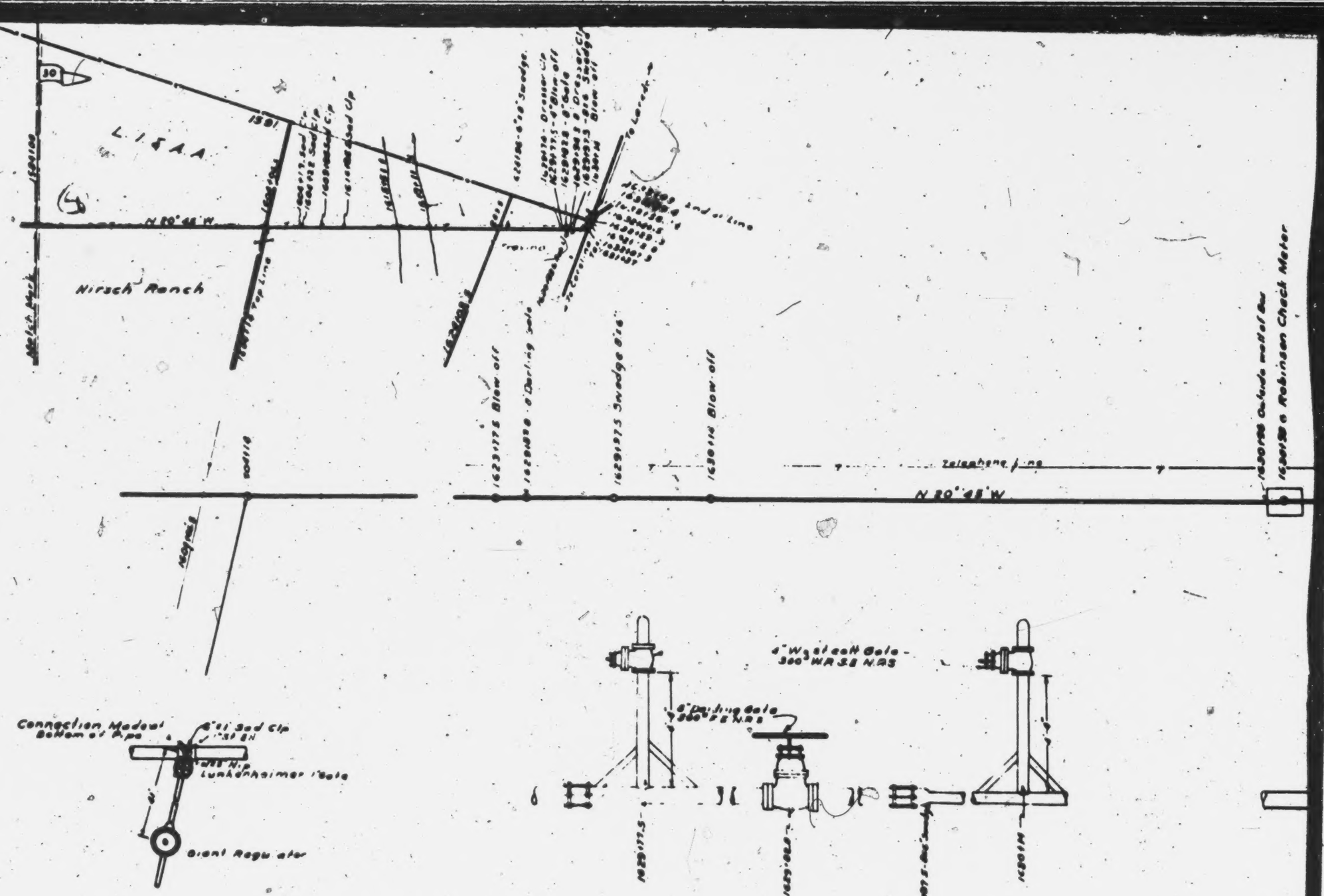
N

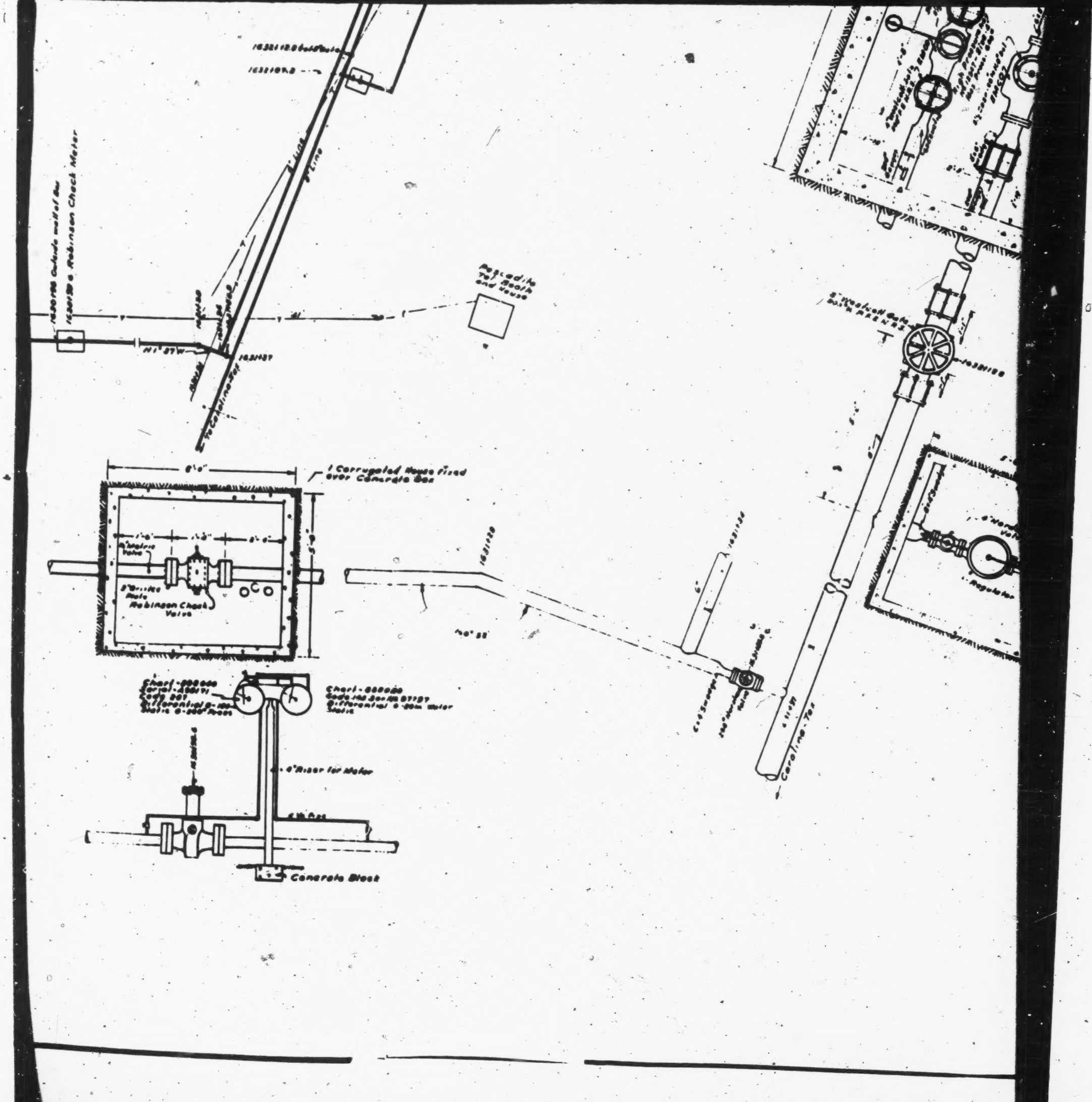
W E B B
C O U N T Y


To Laredo
End of Line
Telephone Line
4" By pass

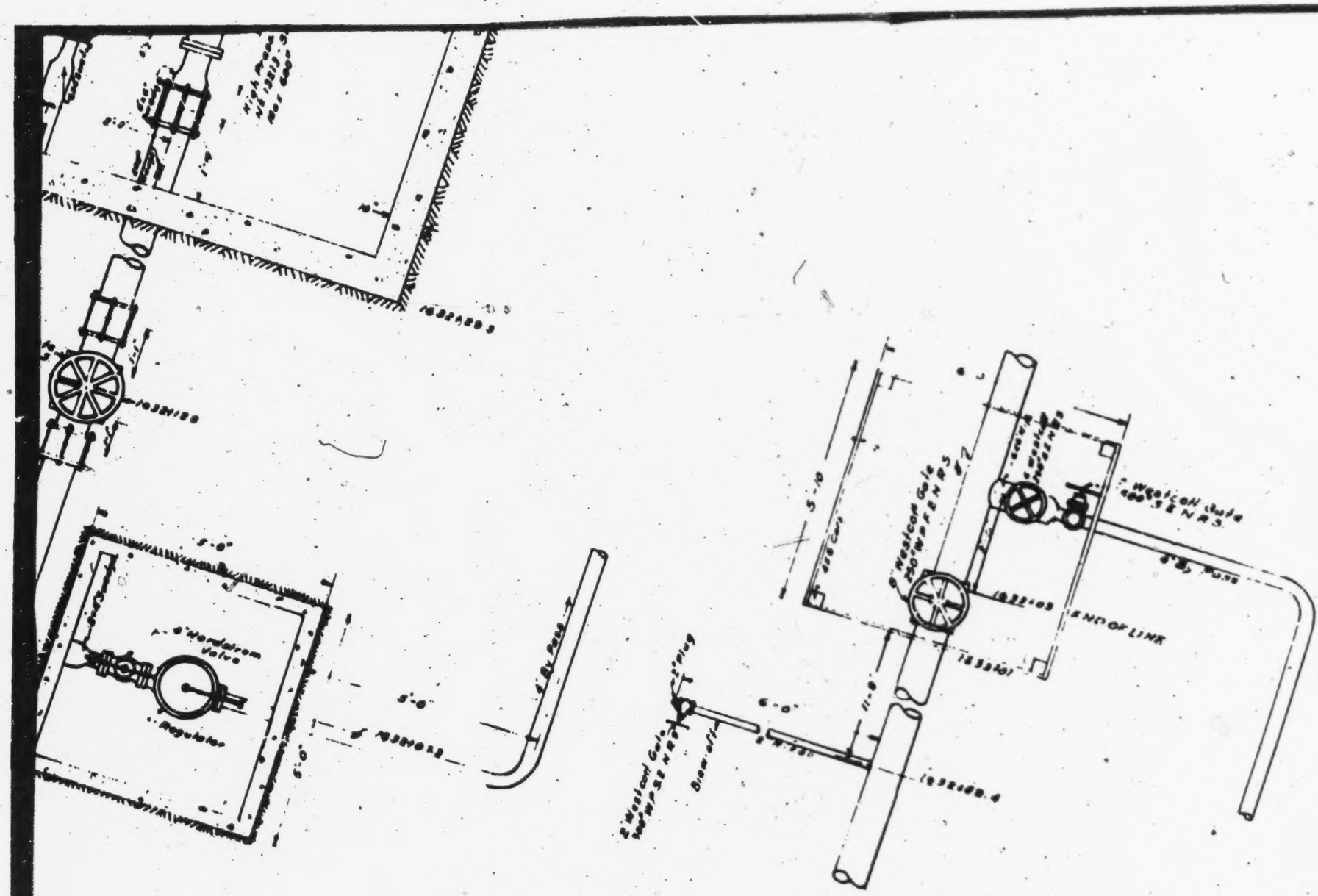





L I S A A
Hirsch Ranch
N 89° 48' W
Meter Hut
Head Gate
Blow off
Swedge
Blow off
Blow off
Swedge
Blow off
Swedge
Blow off
Swedge



Robinson Check Meter
Pescadito Tel. Booth and House
To Caroline Tel.
1 Corrugated House fixed over Concrete Box
Robinson Check Valve
4" Riser for Meter
Concrete Block
Caroline Tel.
Regulator



6" MAIN LINE FROM JENNINGS FIELD TO PESCADITO JUNCTION

Drwg No. Sheet No. 6 Sheets		Dr. by - C.Y. Tr. by - C.Y. Chk. by
Scale 1" = 1000'	APPROVED BY	Date

2472

A. G. MARKLEY

ORTIZ

TACUBA

CHICAGO

PACE

UGARTE

PHILADELPHIA

BOSTON

PIERCE

BALTIMORE

LAFAYETTE

MADISON

BURNSIDE

SHERMAN

BLAIR

JACKSON

FRANKLIN

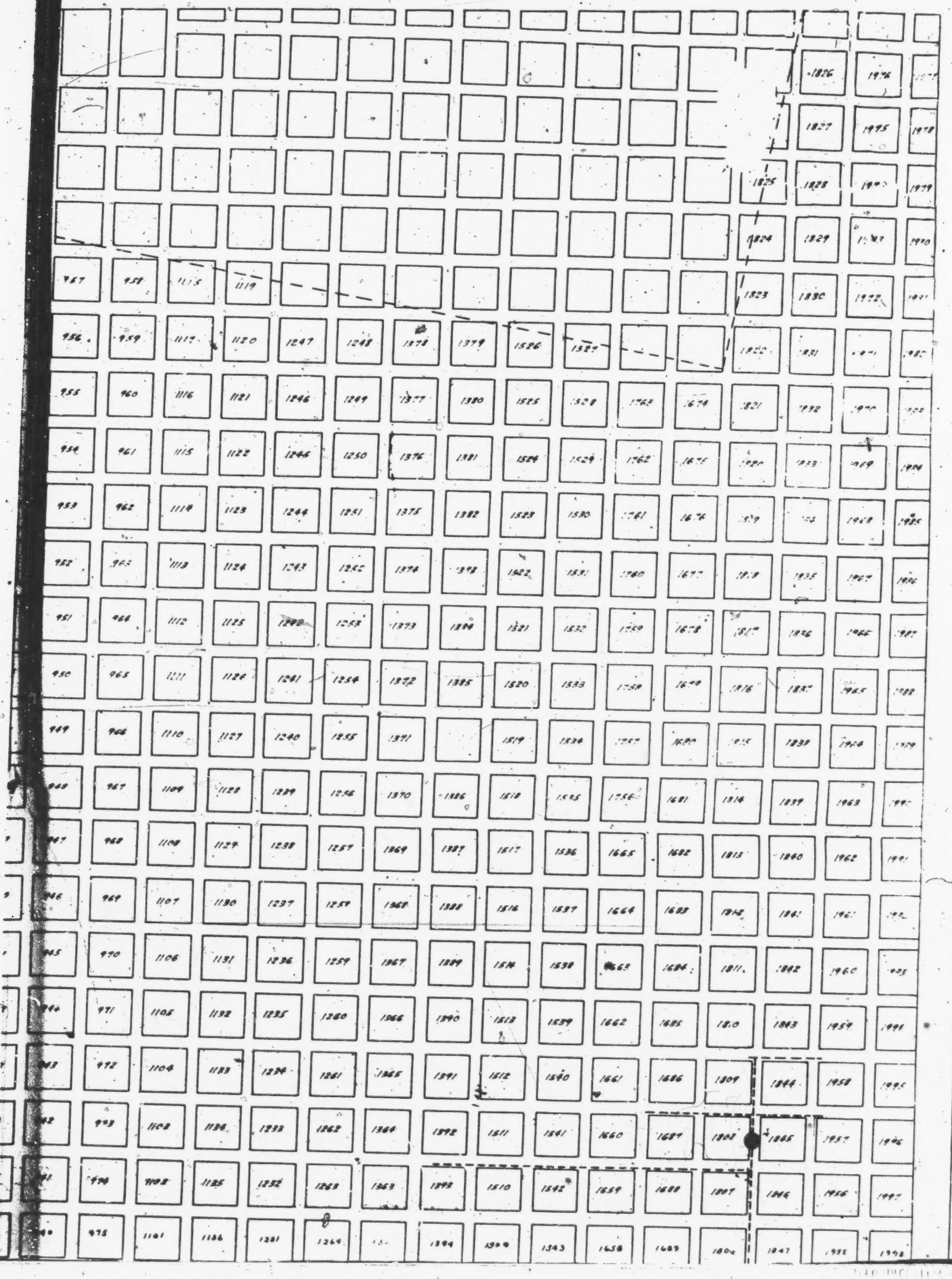
ALAMO

JEFFERSON

CONSTANTINOPLE

ST.

TAYLOR ST.
RYAN ST.
EISETTER ST.
BUSTAMANTE ST.
SAN CARLOS ST.
SAN PEDRO ST.
OLIVE ST.
SANDERS ST.
TRAVIS ST.
SAN JOSE ST.
MONTGOMERY ST.
ASH ST.
ELM ST.
LACOSTE ST.
PLUM ST.
FROST ST.
LYON ST.
KEARNEY ST.


1826 1974
1827 1975 1978
1825 1828 1979
1824 1829 1990
1823 1830 1972
957 958 1115 1119
956 959 1117 1120 1247 1248 1378 1379 1526 1527 1822 1831
955 960 1116 1121 1246 1249 1377 1380 1525 1528 1763 1674 1821 1832
954 961 1115 1122 1245 1250 1376 1381 1524 1529 1762 1675 1820 1833 1969 1979
953 962 1114 1123 1244 1251 1375 1382 1523 1530 1761 1676 1819 1968 1985
952 963 1113 1124 1243 1252 1374 1383 1522 1531 1760 1677 1818 1835 1967 1986
951 964 1112 1125 1242 1253 1373 1384 1521 1532 1759 1678 1817 1836 1966 1987
950 965 1111 1126 1241 1254 1372 1385 1520 1533 1758 1679 1816 1837 1965 1988
949 966 1110 1127 1240 1255 1371 1519 1534 1757 1680 1815 1838 1964 1989
948 967 1109 1128 1239 1256 1370 1386 1518 1535 1756 1681 1814 1839 1963 1990
947 968 1108 1129 1238 1257 1369 1387 1517 1536 1665 1682 1813 1840 1962 1991
946 969 1107 1130 1237 1258 1368 1388 1516 1537 1664 1683 1812 1841 1961 1992
945 970 1106 1131 1236 1259 1367 1389 1515 1538 1663 1684 1811 1842 1960 1993
944 971 1105 1132 1235 1260 1366 1390 1513 1539 1662 1685 1810 1843 1959 1994
943 972 1104 1133 1234 1261 1365 1391 1512 1540 1661 1686 1809 1844 1958 1995
942 973 1103 1134 1233 1262 1364 1392 1511 1541 1660 1687 1808 1845 1957 1996
941 974 1102 1135 1232 1263 1363 1393 1510 1542 1659 1688 1807 1846 1956 1997
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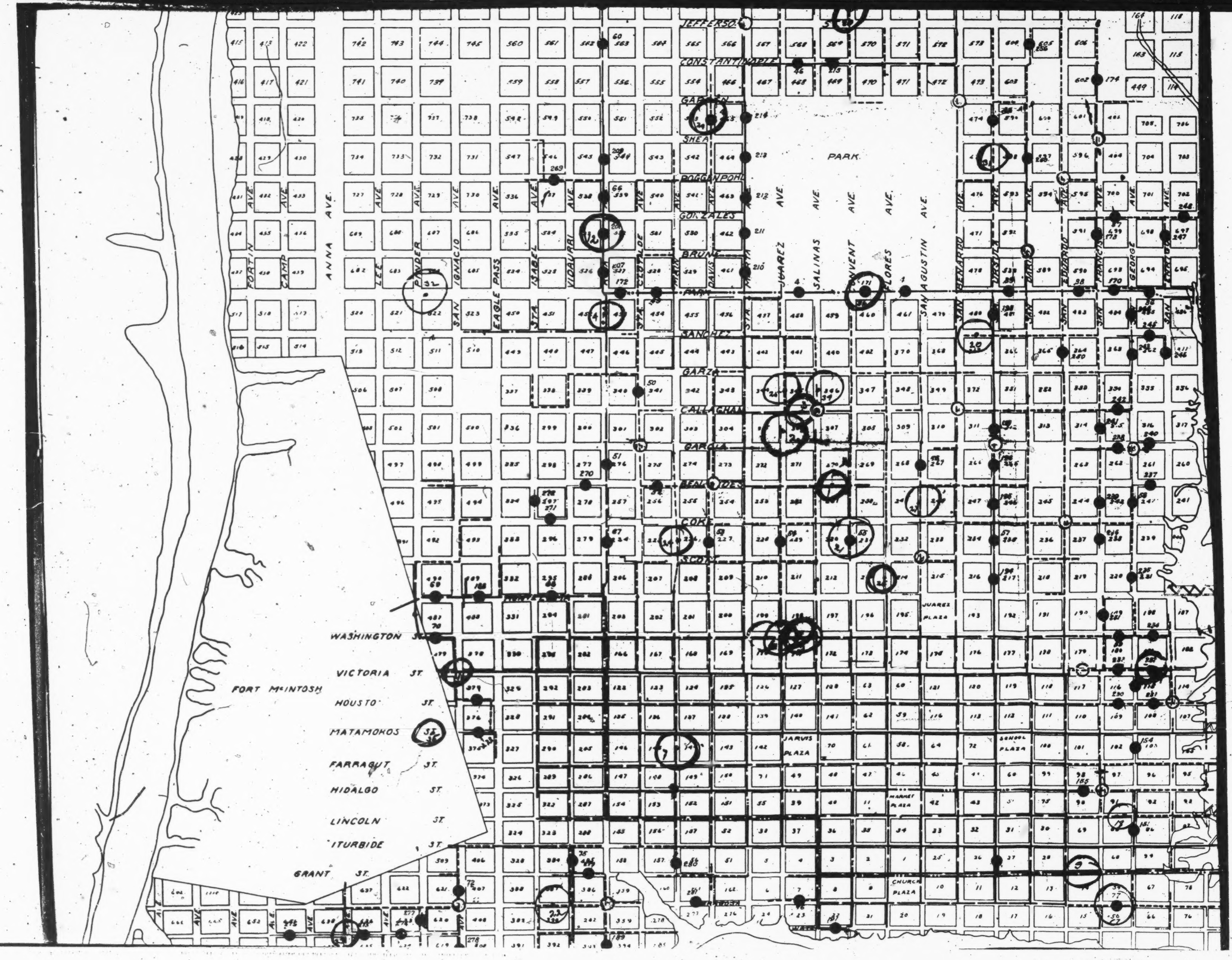
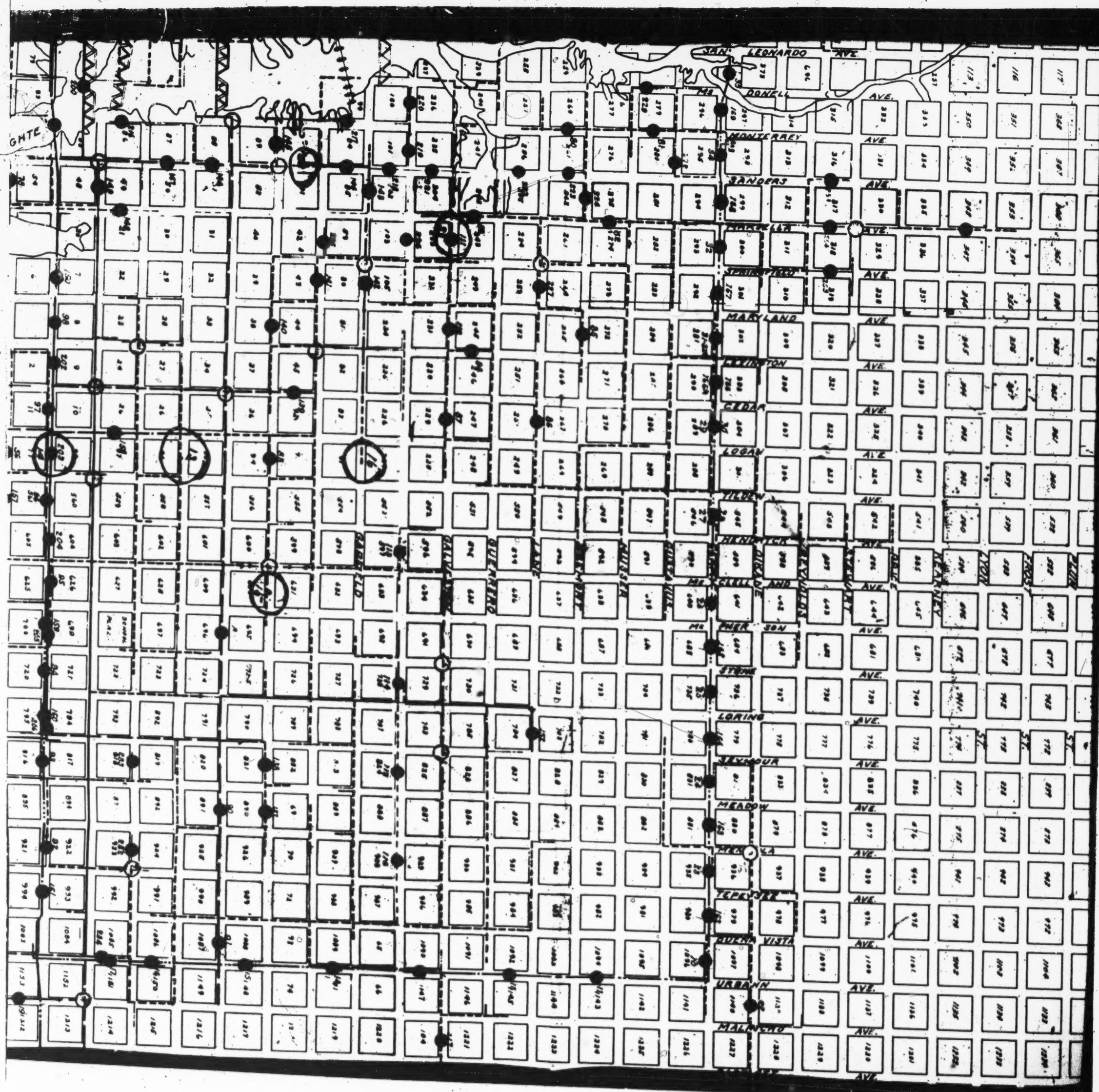
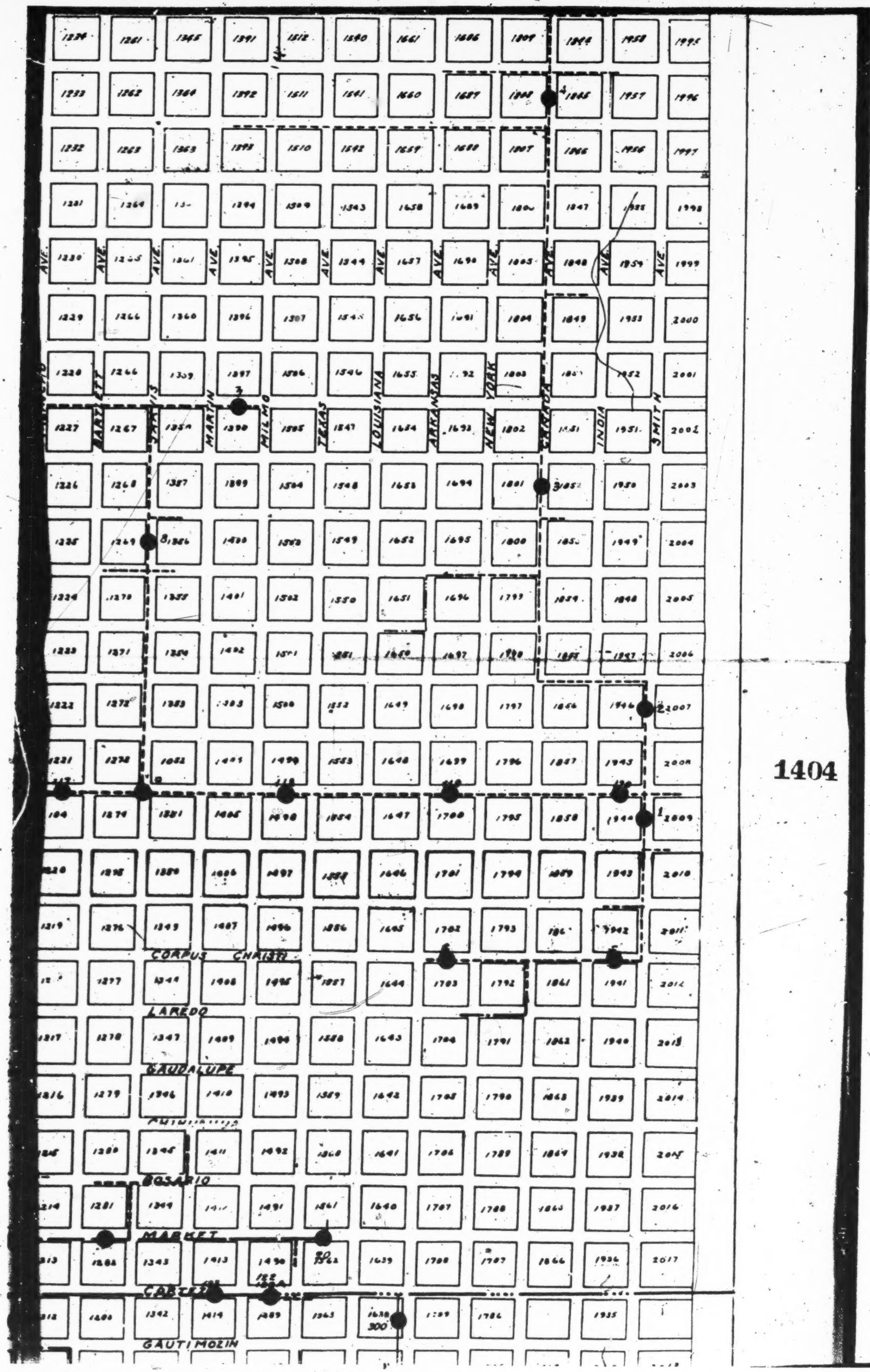

JEFFERSON
CONSTANTINOPLE
GARDEN
SHEA
POGGANPOHL
GONZALES
BRUNE
PARK
SANCHEZ
GARZA
CALLAGHAN
GARCIA
REAL
COKE
SCOTT
WASHINGTON ST.
VICTORIA ST.
HOUSTON ST.
MATAMOROS ST.
FARRAGUT ST.
HIDALGO ST.
LINCOLN ST.
ITURBIDE ST.
GRANT ST.
FORT McINTOSH
ANNA AVE.
FORTIN AVE.
CAMP AVE.
LEE AVE.
BENDER AVE.
SAN IGNACIO AVE.
EAGLE PASS AVE.
ISABEL AVE.
VIDAURRI AVE.
CLOTILDE AVE.
MAIN AVE.
DAVIS AVE.
MARTA AVE.
JUAREZ AVE.
SALINAS AVE.
CONVENT AVE.
FLORES AVE.
SAN AGUSTIN AVE.
SAN BERNARDO AVE.
VIRGIL AVE.
SAN EDUARDO AVE.
SAN FRANCISCO AVE.
SAN GEORGE AVE.
JUAREZ PLAZA
JARVIS PLAZA
SCHOOL PLAZA
MARKET PLAZA
CHURCH PLAZA

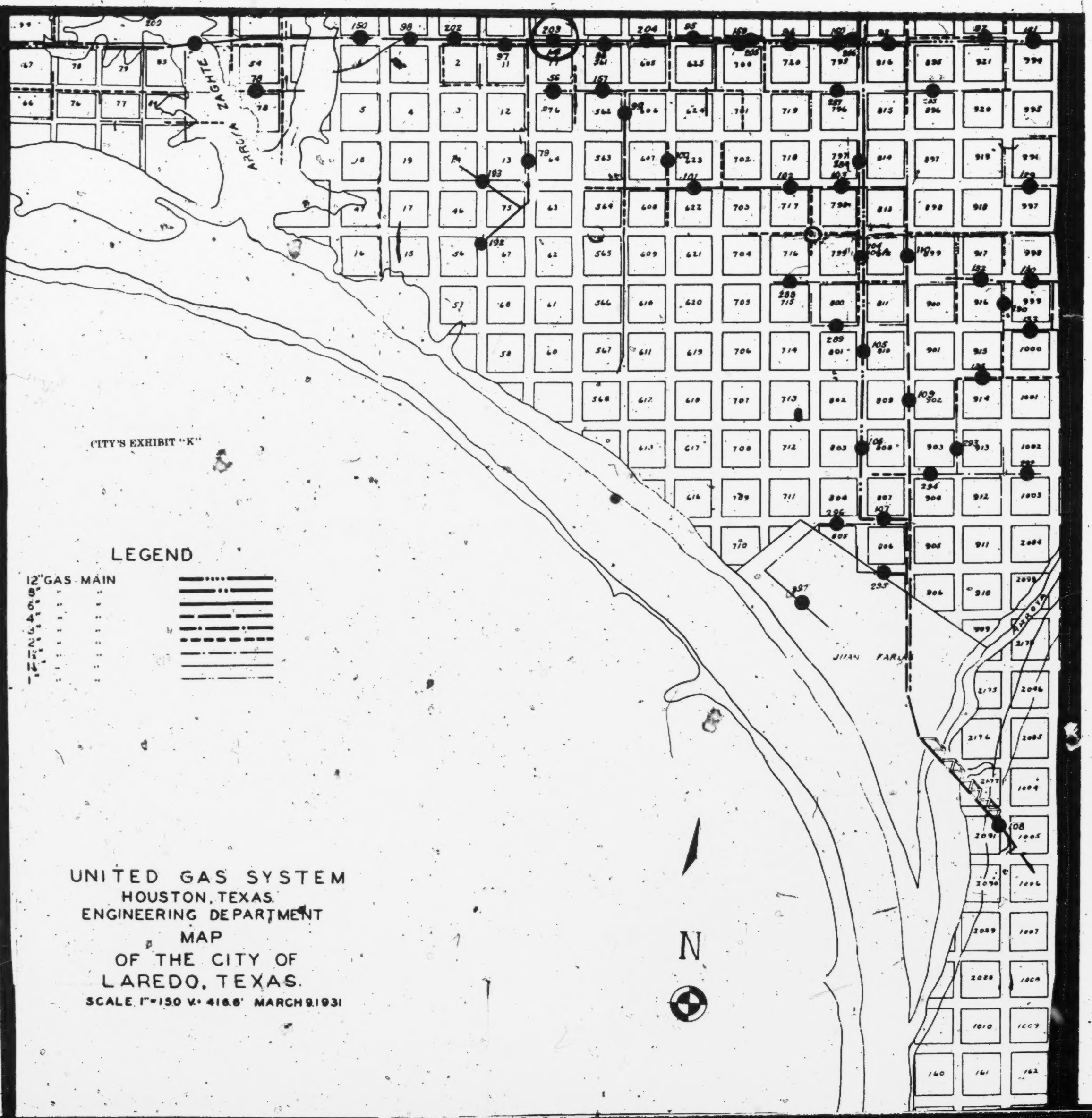

SAN LEONARDO AVE.
DONELL AVE.
MONTERREY AVE.
SANDERS AVE.
MARSELLA AVE.
SPRINGFIELD AVE.
MARYLAND AVE.
LEXINGTON AVE.
CEDAR AVE.
LOGAN AVE.
TILDEN AVE.
HENDRICK AVE.
McCLELLAND AVE.
McPHERSON AVE.
STONE AVE.
LORING AVE.
SEYMOUR AVE.
MEADOW AVE.
MENDOLA AVE.
TEPEYSEE AVE.
BUENA VISTA AVE.
URBANN AVE.
MALINCHO AVE.
GUERRERO
MUSSER
LYON
FROST
PLUM
GHTE



AVE.
BARTLETT
JARVIS
MARTIN
MILMO
TEXAS
LOUISIANA
ARKANSAS
NEW YORK
CANADA
INDIA
SMITH
CORPUS CHRISTI
LAREDO
GAUDALUPE
BOSARIO
MARKET
CARTER
GAUTIMOZIN

SAN PATRICIO AVE.
MORELOS AVE.
SAN MARCOS AVE.
MOWAY AVE.
GILBERT AVE.
WILHELM AVE.
HEADEN AVE.
EVANS AVE.
MAIN STREET
ISLAND
RIO GRANDE RIVER
INTERNATIONAL BRIDGE
PLAZA
H. GARCIA
VICENTE ST.
SAN LUIS ST.
MONTEREY ST.
SALTILLO ST.
ZACATECAS ST.
CHACOTA ST.
TINAJA ST.
PALO BLANCO ST.
THURMAN ST.
MORTON ST.
BAYARD ST.
CROSS ST.
IRELAND ST.

[fol. 3473]


CITY'S EXHIBIT "K"
LEGEND
12" GAS MAIN
8" " "
6" " "
4" " "
3" " "
2" " "
1½" " "
1¼" " "
1" " "
ARROYA ZAGHTE
JUAN FARIAS
N
UNITED GAS SYSTEM
HOUSTON, TEXAS.
ENGINEERING DEPARTMENT
MAP
OF THE CITY OF
LAREDO, TEXAS.
SCALE 1"=150 V.=416.6' MARCH 9, 1931

CARTER

GAUTIMOZIN

ALDAMA

WILLOW

CHALON

PIEDRA CHINA

GREER

MERCER

WOOSTER

MARION

GATES

MILK

STONE

CLEVELAND

BLAINE

ROSS

LIGARDE

BARRIOS

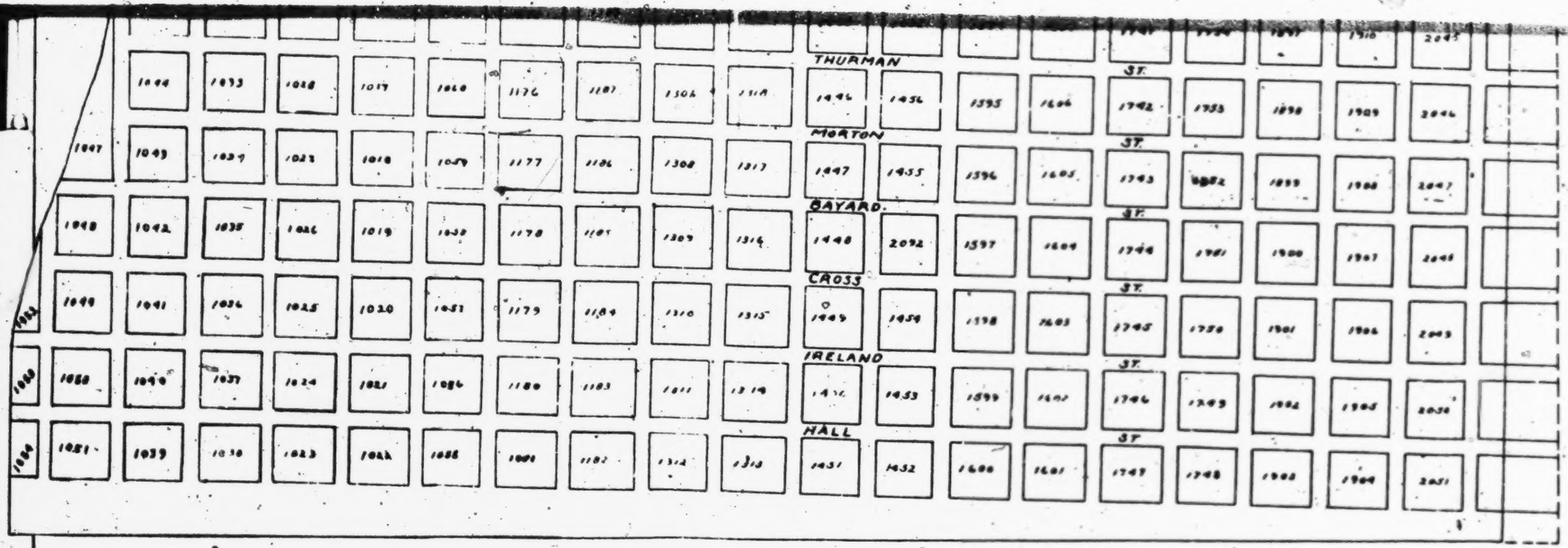
BOULANGER

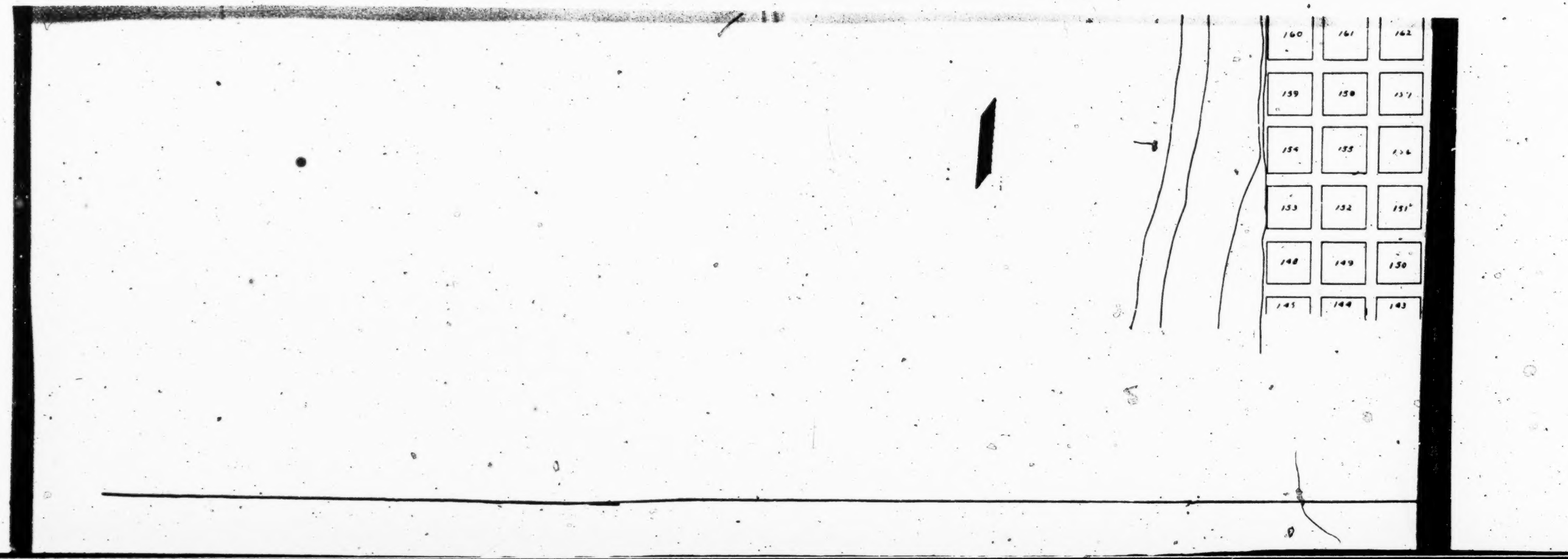
BISMARCK

NAPOLEON

STA. BARBARA

AMELIA


THURMAN
MORTON
BAYARD
CROSS
IRELAND
HALL
ST.


160
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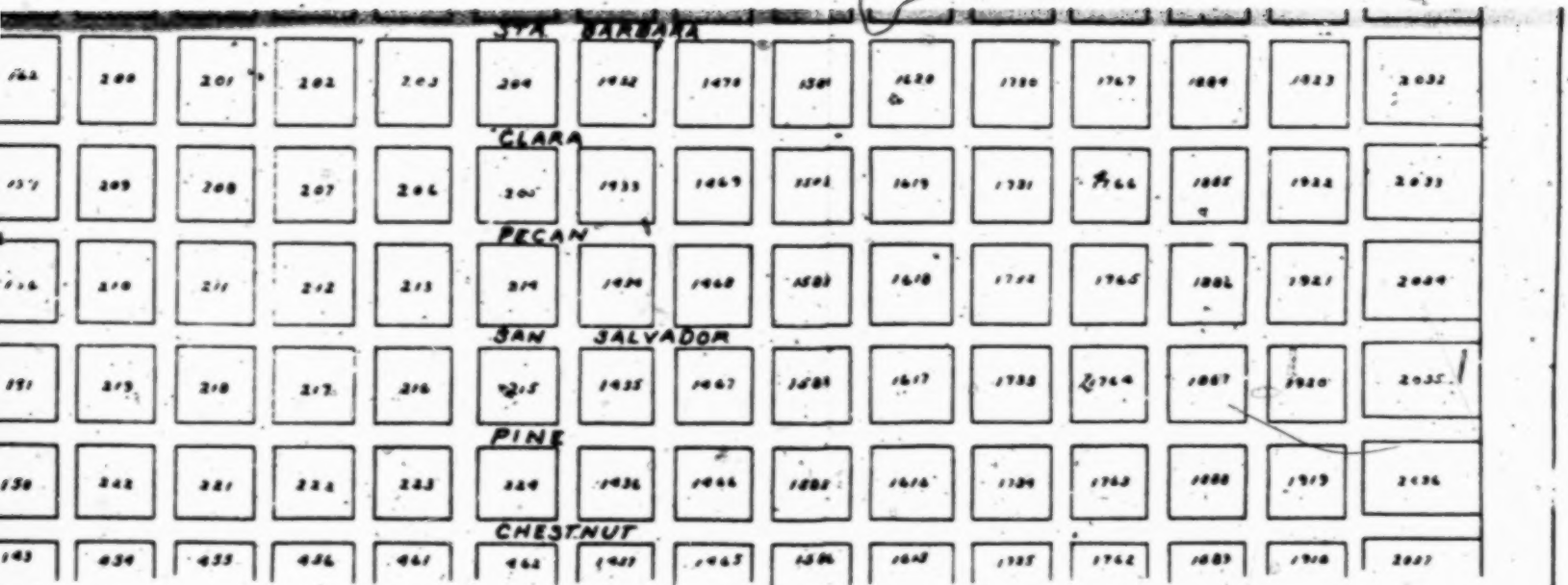

STA. BARBARA
CLARA
PECAN
SAN SALVADOR
PINE
CHESTNUT

[Tabs. 3474-3476] CITY'S EXHIBIT "M"

W É B B

LAREDO

NUEVO LAREDO

4.96 MI.

12"

10"

3.835 MI.

0.80 MI.-8"

1.70 MI.-10"

1.62 MI.-8"

0.51 MI. 8"

0.47 MI. 10"

PESCADITO JUNCTION

PESCADITO CHECK METER

CHECK METER

10.50 MI.- 8"

OLD REISER FIELD

AGUILARES

AGUILARES JUNCTION

13.5 MI. - 6"

0.80 MI.-8"

MIRANDO CITY

4.63 MI.-4"

0.19 MI.-3"

CAROLINA-TEXAS FIELD

MISI REF

28.68 MI. - 6"

River

MIRA

CAROLINA-
TEXAS
FIELD

13.5 MI. - 6"

CAROLINA-TEXAS JUNCTION

TO SAN ANTONIO
12"

TO SAN ANTONIO
14"

FIELD

BRUNI
COMPRESSOR
STATION

BRUNI CAMP

OILTON

DUVAL

MISKO
REF'Y

5"
1.67 MI.

MI.-8"

0.73 MI.-4"

BRUNI

MIRANDO
CITY

4.83 MI.-4"

1.80 MI.-4"

0.80 MI.-2"

BRUNI

0.19 MI.-3"

OLD SCHOTT FIELD

8"

5.91 MI.
2"

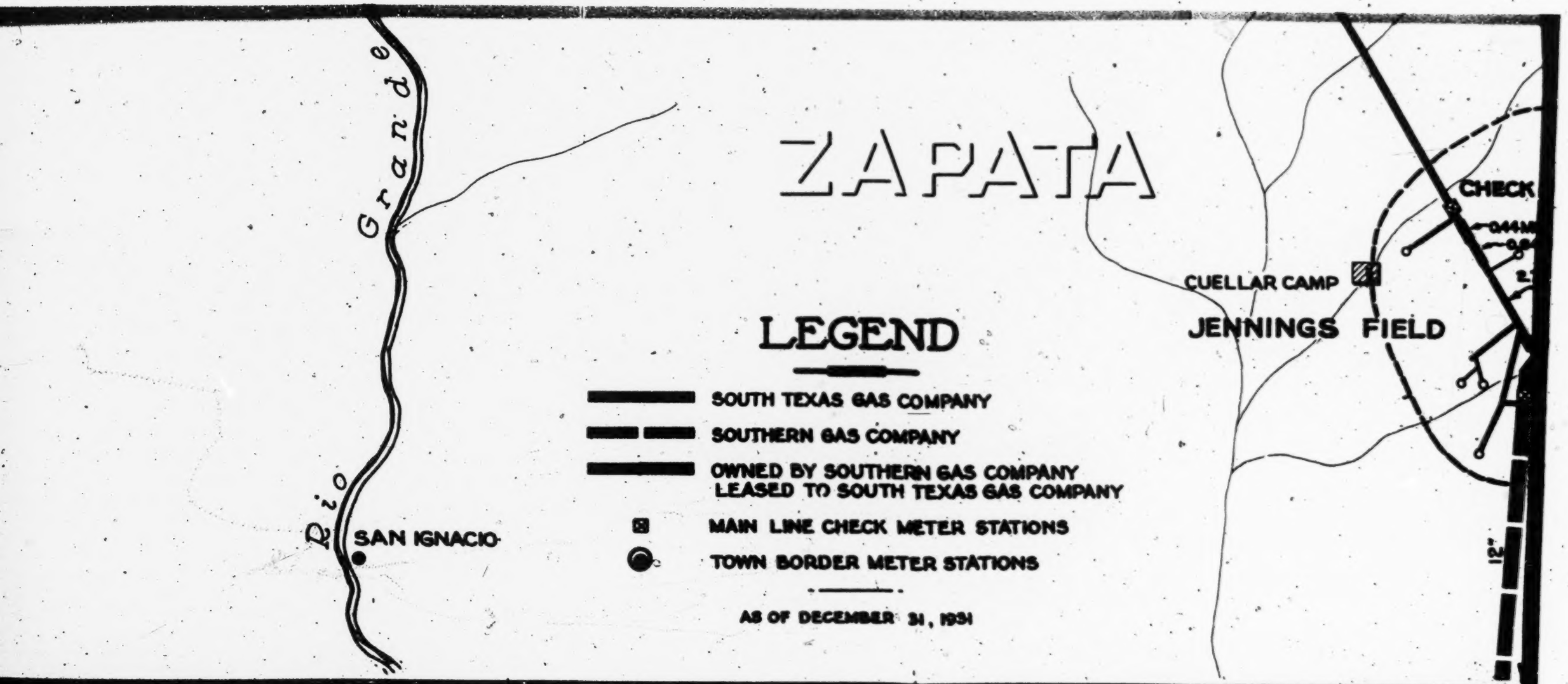
2.50 MI.-4"

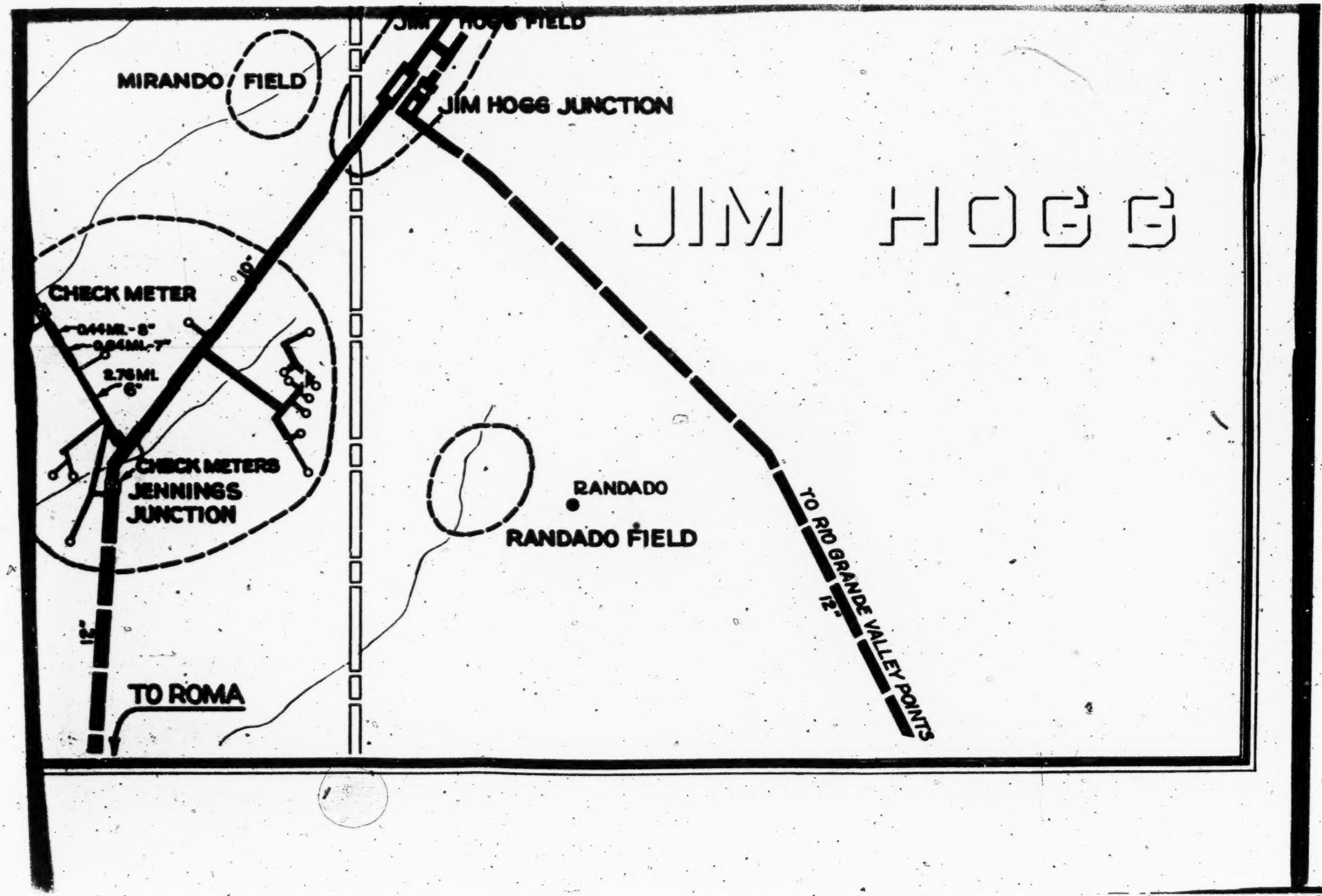
HEBBRONVILLE

JIM HOGG FIELD

MIRANDO FIELD

JIM HOGG JUNCTION


ZAPATA
Rio Grande
SAN IGNACIO
CUELLAR CAMP
JENNINGS FIELD
CHECK
12"
LEGEND
SOUTH TEXAS GAS COMPANY
SOUTHERN GAS COMPANY
OWNED BY SOUTHERN GAS COMPANY
LEASED TO SOUTH TEXAS GAS COMPANY
MAIN LINE CHECK METER STATIONS
TOWN BORDER METER STATIONS
AS OF DECEMBER 31, 1931


JIM HOGG FIELD
MIRANDO FIELD
JIM HOGG JUNCTION
JIM HOGG
CHECK METER
.044ML - 8"
.084ML - 7"
2.76ML 6"
10"
CHECK METERS
JENNINGS JUNCTION
RANDADO
RANDADO FIELD
TO RIO GRANDE VALLEY POINTS
12"
12"
TO ROMA

[fols. 2477-2479] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME FOR DOCKETING OF CASE AND FILING OF TRANSCRIPT OF RECORD—Filed February 8, 1937

Upon consideration of the application of appellant herein for an extension of time within which to docket the above cause and to file the transcript thereof with the Clerk of [fol. 2480] this Court, and being of the opinion that good cause has been shown for the extension of such time,

It Is Ordered that the time within which appellant is required to docket the above cause, and to file the record thereof, with the Clerk of this Court be and it hereby is enlarged from February 25, 1937, to March 12, 1937.

Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States

Dated at Washington, D. C., February 8, 1937.

[fol. 2481] [File endorsement omitted.]

[fol. 2482] IN SUPREME COURT OF THE UNITED STATES.

APPELLANT'S STATEMENT OF POINTS INTENDED TO BE RELIED UPON AND OF PARTS OF THE RECORD TO BE PRINTED—Filed March 12, 1937

[fol. 2483] United Gas Public Service Company, appellant, designates as the points upon which it intends to rely its assignment of errors in its petition allowed herein January 16, 1937, as follows:

1. The Court of Civil Appeals erred in refusing to hold said order confiscatory upon the evidence of its actual operation from its effective date (January 1, 1932), the record made at the trial (March, 1934) showing, when only that testimony most favorable to the order is considered, that its enforcement will limit appellant to a net return of 1-1/10 per cent for 1932, and to a net return of 2-1/10 per cent for 1933, when computed upon the rate base ($885,000 fixed as of August, 1932) and after providing the accrual to depreciation reserve (3 per cent per annum of $885,000), which were found and entered by the Commission as part of said order.

1407

2. The Court of Civil Appeals erred in treating the presumption in favor of the validity of the Commission's order as irrebuttable by the undisputed evidence showing that, upon the Commission's own findings of property value and depreciation accrual, the enforcement of the order will [fol. 2484] clearly deny appellant just compensation for the use of its property during the two years between the effective date of the order and the time of trial.

3. The Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the rate base ($885,000) used by the Commission in making said order was an arbitrary and unlawful understatement of the fair value of appellant's property used and useful to furnish gas service for Laredo.

4. Similarly, the Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the figure for depreciation reserve accrual (3 per cent of $885,000) used by the Commission in making said order was grossly and unlawfully inadequate.

5. The Court of Civil Appeals erred in holding that the evidence was insufficient, as a matter of law, to show that [fol. 2485] the Commission's order was confiscatory, because such holding was made, in so far as it was based upon evidence, upon consideration of only certain portions of the testimony offered by appellees, and not by considering, weighing and passing upon, in the exercise of independent judgment as to facts and law, all of the facts pertinent to confiscation established by competent evidence.

6. The Court of Civil Appeals erred in concluding that the enforcement of the order for 1933 would leave appellant a net return of more than 7 per cent of $700,000, such conclusion being contrary to all the evidence and wholly unsupported by any evidence in the record.

7. The Court of Civil Appeals erred in giving controlling effect to calculations—first made in the Court of Civil

Appeals—purporting to show an average of gross revenues, operating expenses, and net revenues at the 75 cent rate for a period of four prior fiscal years (July 1928-July 1932), and in using such average for the purpose of predicting the effect of said final order upon appellant's revenues subject to regulation thereby, all the evidence at the trial showing that the application of said order to appellant's actual operations since January 1, 1932 will clearly result in confiscation of appellant's property, and all of [fol. 2486] the evidence further showing that the conditions affecting appellant's business during the four prior years used for said averages were greatly different from such conditions prevailing at and after the order is made effective.

8. The Court of Civil Appeals erred, in connection with such calculations, in arbitrarily eliminating therefrom large outlays for operating expenses actually and in good faith incurred in said four prior fiscal years, without any competent evidence in the record to support such elimination.

9. The Court of Civil Appeals erred in computing appellant's supposed rate of return, both for 1933 and as represented by such average revenue calculations, upon a figure of $700,000 for rate base, such $700,000 figure representing the lowest valuation estimated by any witness at the trial and being offered by an engineer witness for appellees as showing estimated reproduction cost, less depreciation, at the end of 1933, the court erroneously refusing to decide confiscation from a judicial determination of fair value made in the exercise of independent judgment applied to all competent evidence thereof.

[fol. 2487] 10. The Court of Civil Appeals erred in holding that, appellant not having put the 55 cent rate to a test, the evidence was insufficient to show confiscation, despite the fact that the record herein shows without dispute that the 75 cent rate was itself confiscatory, it yielding, upon the testimony most favorable to the order and upon the $885,000 rate base and 3 per cent depreciation reserve accrual found by the Commission, a net return of only 3 6/10 per cent for 1932 and of only 4 4/10 per cent for 1933, and despite the showing in the record that a test of said 55 cent rate, in the usual meaning of that term, was rendered impossible by the retroactive operation of the rate order and

by the stay order entered in this suit at the instance of appellees.

11. The Court of Civil Appeals erred in enforcing the retroactive refund provisions of the order in respect of appellant's completed operations of 1932 and 1933, without findings of fact—and without competent evidence as the basis for findings such as would support such action, if any findings were made—upon fair value, reasonable rates of return and depreciation reserve accrual, and net earnings before and after the enforcement of the order for said years.

[fol. 2488] 12. The Court of Civil Appeals erred in failing and refusing to give appellant that independent consideration of both the facts and the law which is essential to a proper judicial review of a rate order claimed to be confiscatory, if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

13. And the said Court of Civil Appeals erred in refusing to hold said order void upon the evidence of its actual operation and effect presented in this case, which evidence showed without dispute that enforcement of the order will take appellant's property without due process of law, compel the use thereof without just compensation and deny appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Said appellant designates the following parts of the record as necessary for the consideration of these points and to be printed by the Clerk:

[fol. 2489] All of the typewritten transcript of record certified by the Clerk of the Court of Civil Appeals pursuant to appellant's præcipe, except the following:

Style	Vol.	Transcript Pages
Defendant's amended motion for new trial in the district court	3	680– 693
Order overruling motion for new trial	3	694
Appellant's assignments of error in the Court of Civil Appeals	3	698– 711

Style	Vol.	Transcript Pages
Order of Chief Justice of Court of Civil Appeals denying petition for appeal to the Supreme Court of the United States	3	836– 839
[fol. 2490] All duplicate copies of notices, etc. inserted merely for the purpose of showing acknowledgment of service, letting the first copy show all such acknowledgments		
Appellees' cross assignments of error (unless designated by appellees)	4	1062–1063

Appellant designates the remainder of said typewritten transcript, after excluding those parts set out above, for printing. Appellant does not designate for printing any part of the original record from the State Court filed herein, with the following exception:

If appellees designate for printing page 2013, S. F. Vol. IV (see appellees' counter præcipe, page 6, section 3, subsection (e)), then please print the following portions of defendant's exhibit 2 from which said page 2013 is taken:

From S. F. Vol. IV:

Page 2009, the index to defendant's exhibit 2.

[fol. 2491] Page 2014, the summary of bases of apportionment as between operations.

Page 2015 to 2030, which give the detail of the bases of apportionment applying to the first few general expense accounts covered in defendant's exhibit 2.

Dated: This 9th day of March, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fols. 2492-2493] [File endorsement omitted.]

[fol. 2494] IN SUPREME COURT OF THE UNITED STATES

APPELLEES' DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 15, 1937.

In accordance with subdivision 9 of Rule 13 of the Supreme Court of the United States, Appellees hereby desig-

nate the following parts of the record to be printed in addition to those parts designated by Appellant by instrument dated March 9th, 1937, and served upon Appellees' counsel March 10th, 1937:

[fol. 2495] I. Appellant's designation of points to be relied upon by it, Nos. 1 to 13, inclusive, as set forth in designation of such points dated March 9th, 1937, and served upon Appellees' counsel March 10th, 1937.

II. All of the portions of the record excepted by Appellant from the designation of portions to be printed on pages 8 and 9 of Appellant's said designation dated March 9th, 1937, and served upon Appellees' counsel March 10th, 1937, which excepted parts consist of Defendant's (Appellant's) amended motion for a new trial in the district court, order overruling same, its assignments of error in the Court of Civil Appeals, its assignments of error from its petition for writ of error in the Supreme Court of Texas, its motion for rehearing in the Supreme Court of Texas, the order of the Chief Justice of the Court of Civil Appeals denying Appellant leave to appeal to the Supreme Court of the United States, and Appellees' cross assignments of error Nos. 1 to 3, inclusive, in the Court of Civil Appeals.

III. All of the portions of the record designated in Appellees' counter præcipe for transcript dated March 2nd, 1937, and filed with the Clerk of the Court of Civil Appeals on the same date, with only the following exceptions and changes:

[fol. 2496] 1. It is to be noted that there is duplication between division A, subdivision 16, and division B, subdivisions 30 and 31, of Appellees' said counter præcipe. The duplication, of course, is to be eliminated and only one copy of each of the proceedings referred to is to be printed.

2. There is likewise duplication between division B, subdivision 29, of Appellees' said counter præcipe and a portion of division G, subdivision 2, of Appellant's præcipe for transcript dated January 30th, 1937, and served on Appellees' counsel February 1st, 1937, the duplicated portion of said last mentioned subdivision reading as follows: "together with acknowledgment of service upon Appellees' counsel of said petition, assignment, prayer, jurisdictional statement, order, notice and statement, and citation";

which duplication is to be eliminated and only one copy of such notice and acknowledgment to be printed.

3. On page 6, paragraph 3, subdivision (d), immediately following "(From S. F. Vol. II)," add: "Notation: Indicate that this testimony was adduced on March 28th, 1934."

4. On page 6, paragraph 3, subdivision (e), substitute in lieu of the said subdivision "(e)" the following: "Include all of Defendant's Exhibit 2 (S. F. Vol. IV) pp. 2009 to 2062."

5. On page 8, paragraph 10, subdivision (b), immediately following "on p. 1526," add the following: "Notation: Indicate that this testimony was adduced on March 27th, 1934."

[fol. 2497] 6. On page 24, paragraph 28, subdivision (b), immediately following "on p. 1715," add: "Notation: Indicate that this testimony was adduced on March 30th, 1934."

7. On page 24, add a new paragraph to be numbered "28-a," to contain the following: "The testimony was concluded and the trial of the case closed on March 30th, 1934. (See S. F. Vol. II, p. 1716.)"

8. On page 15, paragraph 14, subdivision (a), immediately following "through p. 793," add: "Notation: Indicate that this testimony was adduced on March 15th, 1934."

9. On page 13, paragraph 13, subdivision (i), add subsection 1-a: "Include Exhibit K (map) (S. F. Vol. E) p. 2473."

10. On page 13, paragraph 13, subdivision (i), add subsection 3: "Include Exhibit M (map) (S. F. Vol. E) p. 2476. Notation: Replica of map M to be reduced proportionately in size but reproduced in the colorings of the original.

11. On page 15, paragraph 13, subdivision (l), add subsection 5-a: "Include Defendant's Exhibit No. 9 (S. F. Vol. C) pp. 2138-2142; also Defendant's Exhibit No. 9 (2) (S. F. Vol. C) pp. 2142-2147."

12. On page 15, paragraph 13, subdivision (l), add subsection 7-a: "Include Plaintiffs' Exhibit C (S. F. Vol. D) p. 2426."

[fol. 2498] 13. On page 18, paragraph 16, subdivision (b), substitute in lieu of said subdivision (b) the following: "Print only that portion of Plaintiffs' Exhibit 9 (appraisal)

(S. F. Vol. III) pp. 1800 to 1803, both inclusive; p. 1806 and p. 1865.

Notation: The remainder of this exhibit consists of detailed inventory sheets, showing extension of unit prices, etc. upon the individual items of each property account. Indicate the pages omitted."

14. On page 18, paragraph 16, subdivision (c), substitute in lieu of this subdivision (c) the following: "Include: Beginning at the bottom of p. 1110 and continuing through the third answer on p. 1118; beginning with "Then the total" on p. 1171 and continuing through p. 1199.

IV. Appellant's præcipe to the Clerk of the Court of Civil Appeals for contents of transcript, dated January 30th, 1937, and served upon Appellees' counsel February 1st, 1937.

V. Appellant's præcipe for transcript to the Clerk of the Supreme Court of Texas, dated January 30th, 1937, and served upon Appellees' counsel February 1st, 1937.

VI. Appellant's supplemental præcipe to the Clerk of the Court of Civil Appeals and notice to Appellee's counsel, dated February 15th, 1937, and served upon Appellees' counsel February 17th, 1937, supplementing Appellant's [fol. 2499] præcipe of January 30th, 1937, and requesting the Clerk of the Supreme Court of the United States, before printing page 27 of Appellant's statement as to jurisdiction, to change the reference to paragraphs 33, 34, motion for rehearing, C. C. A., so as to read paragraph 35 of said motion.

VII. Appellees' præcipe for transcript, dated and filed with the Clerk of the Court of Civil Appeals March 2nd, 1937.

VIII. Stipulation between counsel for Appellant and Appellees dated March 5th, 1937, agreeing that the entire original record and transcript of certain portions thereof prepared by Appellant and certified by the Clerk of the Court of Civil Appeals might be transmitted to the Clerk of the Supreme Court of the United States in lieu of the transcript prescribed by the rules.

IX. Order of the Chief Justice of the Court of Civil Appeals, March 5th, 1937, approving the stipulation referred

to in Paragraph VIII above, and ordering that the original record be transmitted to the Clerk of the Supreme Court of the United States as provided in said stipulation.

X. All portions referred to in Divisions D, E, F, and G of Appellant's præcipe for transcript to Clerk of the Court of Civil Appeals, dated January 30th, 1937, and served upon Appellees' counsel February 1st, 1937, which have not already been designated by either Appellant or [fol. 2500] Appellees to be printed.

Dated the 12th day of March, 1937.

Edw. H. Lange, Alfred M. Scott, Counsel for Appellees.

[fol. 2501] [Endorsed:] File No. —. Supreme Court, U. S., October Term, 1936. Term No. 807. United Gas Public Service Co., Appellant, vs. State of Texas et al. Designation by appellees of additional parts of record to be printed. Filed Mar. 15, 1937.

Endorsed on cover: File No. 41,347. Texas Court of Civil Appeals for the Third Supreme Judicial District. Term No. 13. United Gas Public Service Company, appellant, vs. State of Texas, Mrs. Miriam A. Ferguson, former Governor of Texas, et al. Filed March 12, 1937. Term No. 13, O. T., 1937.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 807

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant,

vs.

STATE OF TEXAS ET AL.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

STATEMENT AS TO JURISDICTION.

Pursuant to paragraph 1, Rule 12 of the Supreme Court of the United States, as amended March 2, 1936, United Gas Public Service Company, appellant in this appeal from a final judgment entered in the above cause by said Court of Civil Appeals, respectfully shows the following in support of the jurisdiction of the Supreme Court of the United States to review the aforesaid cause on appeal.

a. **Statutory Provisions Sustaining Jurisdiction.**

Chapter 14, 45 Stat. 54 of the Acts of Congress of January 31, 1928 (U. S. C., Sup. VI, Title 28, "Judicial Code and Judiciary," Sec. 861a) provides:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtained by appeal."

Chapter 440, 45 Stat. 466, of the Acts of Congress of April 26, 1928 (U. S. C., Sup. VI, Title 28, "Judicial Code and Judiciary," Sec. 861b) provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

Chapter 229, 43 Stat. 936-7, of the Acts of Congress amends subsection (a) of Section 237 of the original Judicial Code, so that the same provides as follows (U. S. C., Title 28, "Judicial Code and Judiciary," Sec. 344(a)):

> "(a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Su-

preme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The statutes of Texas disclosing that the judgment of the Court of Civil Appeals was the final judgment or decree in this suit in the highest court of the State of Texas in which a decision in the suit could be had, are quoted in the subsequent part of this Statement headed "(c) Date of Judgment and of Presentation of Petition for Appeal."

b. Legislative Act of the State, Validity of Which is Involved.

The legislative act, validity of which is involved, is a final rate reduction and refund order applying to the city of Laredo, Texas, made and entered by the Railroad Commission of Texas on June 13, 1933, regulating, commencing January 1, 1932, appellant's revenues and rates for general domestic gas service in Laredo. An opinion by the Commission was entered as part of the order. Neither the order nor the opinion have been officially published. The full text of both the opinion and the order are attached to this Statement as Appendix B. Their pertinent provisions are summarized as follows:

Summary of the Pertinent Provisions of the Opinion.

History.

Appellant supplies natural gas to the inhabitants of the city of Laredo, Texas, by means of field gathering lines, transmission lines, and a municipal distribution system of gas mains, service pipes, etc., appellant having acquired these properties from two affiliated companies, Texas Border Gas Company and South Texas Gas Company, during the pendency of this proceeding before the Commission.

Since 1921, the rate for domestic use in Laredo has been 75 cents per 1000 cubic feet of gas, 10 per cent discount for prompt payment of bills, minimum monthly bill $1.00. On December 15, 1931, the city governing body of Laredo enacted an ordinance prescribing a domestic rate of 40 cents per 1000 cubic feet, 10 per cent discount for prompt payment of bills, minimum monthly bill $1.00. The matter reached and was heard by the Commission on two appeals, each taken under Article 6058, Revised Civil Statutes of Texas, 1925,[1] the first being an appeal from the ordinance prior to January 1, 1932, and the second being an appeal from the refusal of the city authorities of Laredo to act on appellant's application for an increase in the existing 75 cent rate schedule. These two appeals, being consolidated for hearing, were heard by the Commission in October and November, 1932. The properties were valued as a combined property and the evidence fully presented every phase of the controversy.

[1] Art. 6058. Appeal from City Control.—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal *de novo*. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission. (Revised Civil Statutes of Texas, 1925.)

Conclusions and Findings.

(1) *Property Value.*—The present fair value of company's properties used and useful in gathering, transporting and distributing the natural gas supplied in Laredo is $885,000. This value includes the Pescadito-Jennings transmission lines and West Jennings gathering system, which were used in the service of Laredo only one day in the twelve months ended July, 1932, and are neither being used nor are they necessary for stand-by equipment for Laredo. Because of this valuation of the properties no additional and separate allowance for going value is made. The Supreme Court of the United States recently held (*Los Angeles Gas Corp. v. Comm.*, 289 U. S. 287) that an excess in rate base was applicable to going value, and that the failure to describe that excess as going value was unimportant, if the rate base was in fact large enough to embrace that element.

(2) *Annual Accrual to Depreciation.*—Three per cent (of rate base) is considered ample to meet company's future requirements.

(3) *Available Revenue.*—An average of revenues and expenses for the four fiscal years ended respectively June, 1929, 1930 and 1931, and July, 1932, constitutes the test period for the computation of the rate structure upon which a fair return is to be predicated. The fiscal years ended in 1931 and 1932 were both subnormal. Gross revenues received in the fiscal year ended 1930 were substantially higher than in the fiscal year ended 1929. The inclusion in the computation of the fiscal year ended 1929 tends to equalize the effect of including the fiscal year ended 1930. Reasonable compensation—and not the amounts shown by the statements of actual operating expenses—should be allowed the company in connection with loss on bad debts, general office expense, advertising, maintenance of general

structures, donations, testing mains for leaks, and rate case expense (amortized over a period of ten years).[1]

(4) *Annual Rate of Return.*—Seven per cent of the present fair value of the properties is adequate.

(5) *Reasonable Schedule of Rates.*—A rate schedule of 55 cents net per 1000 cubic feet of gas for all domestic uses, 10 per cent penalty for nonpayment in ten days, minimum monthly bill $1.00, is reasonable and its application will produce a net return in excess of 7 per cent on the present fair value of the properties after providing operating expenses and the depreciation reserve accrual.

Summary of the Pertinent Provisions of the Order.

The above opinion stating the Commission's conclusions and findings having been filed in the case, the opinion is made part of the order.

It is ordered that the rates to be charged to consumers of natural gas in Laredo, from and after January 1, 1932, shall be: For natural gas for domestic use, 55 cents per 1000 cubic feet, minimum monthly bill $1.00, 10 per cent penalty for nonpayment of bills within 10 days. It is further ordered that no fixed charges be set for the sale of natural gas to Laredo nondomestic consumers. It is further ordered that the company shall refund to the city of Laredo for the benefit of domestic gas consumers the difference between the amount collected by the company and the amount that would have been due by domestic consumers under the order. The application for increase in domestic gas rates is denied.

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[1] The amount of the "reasonable compensation" allowed and used in lieu of the actual amount of these operating expenses is not disclosed by the Commission's opinion or order or by any other part of the record before the Commission or in this trial.

The order is dated at Austin, Texas, June 13, 1933, signed by the Railroad Commission of Texas by the members of the Commission and attested by the secretary.

c. Date of Judgment and of Presentation of Petition for Appeal.

The judgment sought to be reviewed is the judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas entered October 30, 1935, in cause numbered 8176 and styled United Gas Public Service Company, appellant, v. State of Texas et al., appellees, being an appeal from the District Court of Travis County, Texas. The Texas statutes provide (reference being to the Articles of the Revised Civil Statutes of Texas, 1925, which is a recodification adopted by the Texas Legislature, and approved by the Governor of Texas on April 1, 1925):

> "ART. 1876. Decision and Opinion.—The Courts of Civil Appeals shall decide all issues presented to them by proper assignments of error by either party, whether such issues be of fact or of law, and announce in writing their conclusions so found."
>
> "ART. 1877. Motion for rehearing.—Any party desiring a rehearing of any matter determined by any Court of Civil appeals, may, within fifteen days after the date of entry of the judgment or decision of the court, or the filing of the findings of fact and conclusions of law, file with the clerk of said court his motion in writing for a rehearing thereof, in which the ground(s) relied upon for the rehearing shall be distinctly specified, * * *."

Appellant's motion for rehearing by the Court of Civil Appeals was filed the 14th day of November, 1935, and overruled January 8, 1936.

Pertinent sections of Art. 1728, Revised Civil Statutes of Texas, 1925, are:

"Appellate jurisdiction.—The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

1. * * *

2. * * *

3. Those involving the construction or validity of statutes necessary to a determination of the case.

4. * * *

5. Those in which the Railroad Commission is a party.

6. * * *

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; * * *"

Pertinent provisions of the Texas statutes governing review of decisions of Courts of Civil Appeals by the Supreme Court of Texas are:

"ART. 1729. Writ of error or certificate.—All causes mentioned in the preceding article (1728) may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, * * *."

"ART. 1740. Petition for writ of error.—A writ of error before the Supreme Court may be applied for by petition addressed to said Court and the petition shall contain such other requisites as may be prescribed by the Supreme Court; * * *."

"ART 1742. Filing.— The petition shall be filed with the clerk of the Court of Civil Appeals within thirty days from the overruling of the motion for rehearing."

Appellant's petition applying for writ of error in this cause was filed with the clerk of the Court of Civil Appeals the 7th day of February, 1936. This petition, accompanied by the record, was filed forthwith in the Supreme Court of Texas and became Application No. 21776 on the docket of that court. The application was denied by the Supreme Court October 6, 1936.

Motion for rehearing upon action of the Supreme Court of Texas in denying application for writ of error is not covered by the statutes of Texas, but is provided for in Rule No. 4 of the Rules of the Supreme Court of Texas, pertinent provisions of such Rule being as follows:

> "A motion for rehearing of an application for writ of error is not a matter of right, but in case such motion shall be filed within fifteen days after the refusal of the application and before the court shall adjourn for the term, the court will consider the same if it be based upon a ground not embraced in the application or contains the citation of authorities not before cited. * * *."

Appellant's motion for rehearing upon the action of the Supreme Court of Texas in refusing its application for writ of error was filed the 22nd day of October, 1936, and overruled the 30th day of December, 1936.

Under Sec. 344(a), Title 28, United States Code, the judgment of the Court of Civil Appeals entered October 30, 1935, became, at the time the Supreme Court of Texas overruled appellant's motion for rehearing, a final judgment or decree in this suit in the highest court of the State of Texas in which a decision in this cause could be had.[1]

Appellant's application for appeal from this judgment to the Supreme Court of the United States was presented to the Chief Justice of the Court of Civil Appeals for the

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[1] *Bacon* v. *Texas*, 163 U. S. 207, 215; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *San Antonio and A. P. R. Co.* v. *Wagner*, 241 U. S. 476, 477.

Third Supreme Judicial District of Texas on January 5, 1937, and by him refused on January 7, 1937; and was presented to Hon. Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States on January 15th, 1937.

The Nature of the Case and the Rulings of the Court Showing Jurisdiction.

The Nature of the Case.

The events leading up and giving rise to appellant's appeals to the Railroad Commission of Texas, as well as the Commission's conclusions, findings of fact and rate order pursuant to such appeals, have been summarized on pages 3-7 hereof.

On June 29, 1933, appellant filed a bill in equity in the United States District Court seeking to enjoin the Commission and the city of Laredo from enforcing the Commission's said order upon the ground that such order was confiscatory. Appellees, on July 26, 1933, filed this suit against appellant in the State district court. Appellees averred that appellant had brought the prior suit in the Federal court, and had alleged therein

> "• • • that the order entered by the Railroad Commission of Texas fixed and prescribed a rate confiscatory of its property used and useful in the public service • • •"

and, upon said allegation, that appellant had secured a temporary restraining order, and further averred that appellant's application for interlocutory injunction was set for hearing in the Federal court on July 31, 1933 (par. X). Paragraph XI of appellees' said petition reads:

> Plaintiffs are desirous of having the constitutional questions involved in the attack being made by United Gas Public Service Company upon the Commission's

> order heard and determined in the courts of this State, and to that end desire this court to enter a stay of proceedings in accordance with the provisions of Section 380, Title 28, U. S. C. A. to the end that all proceedings in the district court of the United States will be stayed pending a final determination of this cause in the courts of this State.

Appellees prayed that, pending a final determination of the suit in the courts of the State, appellees be stayed from enforcing the order, and that upon final hearing appellant be permanently enjoined from making charges in excess of the rates prescribed by the Commission in said order. The Commission's order and its opinion made a part thereof were attached to said petition and incorporated therein by reference.

Appellees, on July 26, 1933, the same day the second suit was filed, sought and obtained from the State court a court order directing that all proceedings to enforce said rate order against appellant be stayed, said court order also directing that appellees refrain from taking any steps to enforce said rate order pending the determination of said cause in the State court, and directing further that appellant

> "* * * shall not be subjected to any penalties, damages or forfeitures on account of its failure to comply with * * * said order of the Railroad Commission * * *, or on account of any provisions of the statutes of this State, where such failure to comply with same has taken or takes place before the final determination of this suit." (Order staying proceedings, filed July 26, 1933.)

Upon appellees' motion, further proceedings in the Federal court were stayed. (Order of Federal court staying proceedings.)

By amended answer filed in this suit on March 5, 1934,[1] appellant attacked the validity of the order because it was without findings essential to support it (section A, 2 (a) and (c); par. III (a)); because the findings made by the Commission in respect of the use of average revenues for four prior years did not support the order, in that the necessary effect of the Commission's method—namely, averaging with the revenues for the year ended July, 1932, the much higher revenues of the three prior years, fixing a rate upon such average; and then making such rate retroactive to January 1, 1932—was to fix a confiscatory rate from January 1, 1932, and in that the practical result was to enforce present confiscation by use of prior predepression earnings, calculated upon a rate base fixed at depression prices (par. III). Appellant further averred that the revenues of these four prior years contained very substantial collections (about $231,000) which were non-recurring within the period regulated by the order and for the future, and hence the use of such average revenue figure was arbitrary and imposed confiscation (par. VIII).

In section D of said answer, appellant specifically averred that the reproduction cost new of its properties used and useful to serve Laredo in both 1932 and 1933 exceeded $1,439,525.00; that reproduction cost new, less depreciation, exceeded $1,252,828.00; that historical cost exceeded $1,200,000.00, and that present fair value exceeded $1,225,000.00. Appellant alleged that the depreciation allowance of 3 per cent of rate base fixed by the Commission was arbitrarily determined and wholly inadequate (par. IX). Appellant alleged that, both upon fair value of $1,225,000.00 and upon the Commission rate base of $885,000.00, after providing even the inadequate depreciation allowance of 3 per cent,

[1] The proper State procedure for setting up facts which have occurred since the suit and the original answer therein were filed is by an amended answer, which takes the place of the original answer.

the existing 75 cent rate was confiscatory in 1932 and in 1933, and that the 55 cent rate would leave nothing for return in either year on a rate base of $1,225,000.00, after providing only 3 per cent thereof for depreciation. Upon the rate base and depreciation allowance fixed by the Commission, appellant alleged that application of the 55 cent rate would leave about 1 per cent return in 1932, and nothing for return in 1933. Appellant then alleged:

> "By reason of the above facts, the Commission's said order of June 13, 1933, is unlawful and void, and, if enforced, will deprive defendant of its property without due process of law, and deny it the equal protection of the laws, contrary to the Fourteenth Amendment to the Federal Constitution * * *"

The case was tried to a jury demanded by appellees, appellant's motion to discharge the jury and to try the case before the court being overruled. The entire record before the Commission was introduced (appellant's exhibit 13), but the trial was essentially *de novo*, new and full testimony being introduced as to property value, depreciation reserve accrual, revenues, expenses, rates of return, etc. in respect of 1932 and 1933, the evidence being brought as nearly as possible to the time of trial.

The result of the case, as well as the stages at which and the methods by which the Federal questions were raised, appear from the following sub-section of this statement.

Rulings of the State Courts Showing Jurisdiction

At the conclusion of all testimony, appellant, by motions for verdict and for judgment, raised the question that all the testimony as to the actual result of enforcing the order from its effective date showed the order to be confiscatory. These motions were overruled, and appellant then sought to have the questions of fact, made by the conflicting testi-

mony as to property value, depreciation reserve accrual, etc., in 1932 and in 1933, submitted to the jury as separate issues. This was done by motion for submission upon special issues and by presenting such issues to the judge with the request that they be submitted. The motion was overruled and such issues refused, and the court submitted the case to the jury upon a charge consisting of definition of terms and one question which is as follows:

> "Special Issue No. 1: Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company? Answer this question 'Yes' or 'No'."

It then appearing for the first time that appellant was to be denied findings of fact in the lower court, appellant, by timely objections to the court's charge, raised the question that submission of the case in this manner denied appellant a trial of the issues of confiscation upon independent judicial findings of the facts and upon the independent judgment of the court applied to such facts as found; and likewise denied appellant a trial record from which appellant could know, reserve and present for appellate review questions in respect of such issues of confiscation, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution (objections to the charge, pars. I, II, III, XI). Appellant likewise objected to the charge because it was multifarious and submitted a question of law to the jury (par. XIII (f) & (g)). These objections were overruled, and the court received and entered the jury's verdict answering the above question "No". After reciting such charge and verdict in its judgment, the court then denied enforcement of the order for

any period prior to the date said judgment was entered (April 24, 1934), but permanently enjoined appellant to future compliance with said order, until the same was modified or set aside by the State regulatory authorities.[1]

By motion for new trial, which motion was overruled, appellant appropriately reserved all of the above Federal questions which arose at the trial (pars. 2, 3, 9, 26, 28, 50, 59, 73, 78, 94-116 and 234 of said motion).

The appellant, upon appeal to the Court of Civil Appeals, assigned as error by assignments 1-10 (likewise presented as propositions 1-10), the Federal questions raised below in respect of lack of evidence to support the order, in that all the evidence showed the higher 75 cent rate to be grossly inadequate at and subsequent to January 1, 1932, in that the basic assumption involved in the Commission's method of fixing the 55 cent rate upon average revenues for the four prior years, namely, that revenues at and after January 1, 1932, would equal such average, was shown by all the evidence at the trial to be directly contrary to the facts, and because all the evidence, including that most favorable to the order, showed that its enforcement from and after January 1, 1932, would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land.[2]

The Court of Civil Appeals refused to consider, as presenting only questions of practice, assignments 11-79. These

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[1] Prior to the time the judgment was entered appellant again raised the question that all the evidence in respect of the actual enforcement of the order from its effective date showed unquestioned confiscation, the method being by motion for judgment notwithstanding the verdict, which motion was overruled.

[2] The State Constitution contains no clause using the term "due process of law", the equivalent clause prohibiting deprivation of property—"except by due course of the law of the land." Sec. 19, Art. I, Constitution of Texas.

included assignments upon refusal of the trial court to so submit the case as to provide findings upon property value, depreciation reserve accrual (assignments 29, 31, 37, 39, 41), etc., the assignment upon the consequent denial of a trial in accordance with due process upon appellant's defences of confiscation under the Federal Constitution (assignment 18), as well as the denial of the opportunity of knowing the grounds for the jury's verdict and for any judgment based thereon, and of reserving for review in the courts of appeal, State and Federal, questions as to the existence and sufficiency of evidence to support the verdict and judgment (assignment 19). They included assignments claiming that charge submitted to the jury constituted an attempted delegation to a petit jury of the power to determine as a matter of law whether such order was repugnant to the Federal Constitution (assignment 20; also assignments 13 and 14). These points were presented by assignments 11 *et seq.*, adopted as propositions similarly numbered.

The Court of Civil Appeals, in its opinion, recognized that confiscation was raised below, saying:

> "In the State court appellant filed an answer, attacking the 55 cent rate, alleging that the rate order was based on assumption contrary to the facts with regard to the average annual revenues of appellant, and was therefore not supported by any evidence; and that because the 55 cent rate did not yield a net return of 7% per annum from January 1, 1932, down to the date of the trial (in April, 1934), and would not yield a reasonable return on the fair value of the property used in the public service, the rate order was therefore unjust and unreasonable and confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of both the State and Federal Constitutions."

The Court of Civil Appeals attempted to restate the questions presented by assignments 1-10, as follows:

"And by propositions 1 to 10, appellant in one way or another, contends that the evidence showed, as a matter of law, that the 55 cent rate order was confiscatory, and per se unjust and unreasonable, on two grounds, as follows:

1. That because the existing 75 cent rate did not yield a 7% return on the $885,000 valuation of the property from January 1, 1932, the effective date of the city ordinance, to December 31, 1933, or down to the date of the trial in April, 1934, the lower 55 cent rate would necessarily not yield a reasonable return on appellant's property.

2. That in making its calculations for the 55 cent rate the Commission assumed that appellant's revenues from January 1, 1932, would equal its revenues for the period beginning June 30, 1928, and ending July 31, 1932, which assumption was contrary to the facts, because it was assumed that the revenues from the two industrial sources which had stopped coming in were still being collected, and because of existing depression conditions, revenues had decreased, and for which reason the 55 cent rate would not afford a reasonable return on the fair value of appellant's property.

The Court's ruling on all questions raised is shown by the following excerpt from its opinion:

"Appellant briefs the appeal in two parts. In 'Part I' and by propositions 1 to 10, appellant seeks to have the judgment below reversed and judgment rendered for it. In 'Part II' of the brief and by propositions 11 to 79, appellant contends that the judgment should be reversed and the cause remanded, because of several alleged errors of practice.

We have reached the conclusion that appellant not only failed to establish its claim for reversal and rendition of judgment in its favor, but that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presump-

> tion, the evidence adduced was insufficient, as a matter of law, to show that the 55 cent rate order was either unjust and unreasonable or confiscatory. In view of this conclusion, all questions of practice presented in 'Part II' of the brief go out of the case."

The judgment entered by the Court of Civil Appeals reformed the judgment of the lower court so as to enforce the Commission's order in its entirety and from January 1, 1932, the order's retroactively effective date, and as so reformed, affirmed the judgment below, the concluding paragraph of the opinion of the Court of Civil Appeals being:

> "In accordance with our above conclusions, the judgment of the trial court is reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Commission valid and enforceable, and as thus reformed the judgment of the trial court will be affirmed."

The action of the Court of Civil Appeals in reforming the judgment gave added significance to the direct evidence and assignments as to the confiscatory effect of the order as shown by operating results for the calendar years 1932 and 1933. The manner of review employed by the court presented several additional Federal questions, and further fortified the showing upon denial of a determination of confiscation in the exercise of independent judicial judgment.

The Federal questions, as presented by the assignment of errors in this appeal, were all reserved, if they arose below, or were raised, if they first appeared from the judgment of the Court of Civil Appeals, by appellant's motion for rehearing in the Court of Civil Appeals, and have since been appropriately reserved in appellant's petition for writ of error by the Supreme Court of Texas, as well as by appellant's motion for rehearing in that Court.

The following subdivisions have the same numbers as the paragraphs in the assignment of errors to which they refer.

1. *The order is void because its enforcement will result in confiscation.*

The basis for the claim that, considering only the testimony as to revenues and expenses most favorable to the appellees, and when calculated upon the Commission's rate base and depreciation allowance, the order is confiscatory both for 1932 and 1933, is the following computation from the record:

Result of Enforcing the 55 Cent Rate.

1932.

Operating revenues	$161,637.65
Operating expenses	$125,001.40
Net for return and depreciation reserve	$ 36,636.25
Deduct 3 per cent of $885,000 for depreciation reserve	$ 26,550.00
Net Return	$ 10,086.25

Rate of return: 1-1/10 per cent of $885,000.

1933.

Operating revenues	$138,256.85
Operating expenses	$ 93,298.46
Net for return and depreciation reserve	$ 44,958.39
Deduct 3 per cent of $885,000 for depreciation reserve	$ 26,550.00
Net Return	$ 18,408.39

Rate of return: 2-1/10 per cent of $885,000.

Appellant has asserted that the judgment and order are void, because enforcement of the order will deprive appellant of its property without due process of law and deny it

the equal protection of the laws "* * * in violation of appellant's constitutional rights under Section 1, Fourteenth Amendment, U. S. Constitution" (pars. 3, 6, 7, 9, and 11, motion C. C. A. See assignments 4, 5, 6 and 7, petition, and par. 1, motion, Sup. Ct. of Tex.).

2. *Presumption of validity held irrebutable by uncontroverted evidence of the actual confiscatory effect of the order.*

The Court of Civil Appeals held that

> "* * * when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was unsufficient, as a matter of law, to show that the 55 cent rate order was * * * confiscatory."

Appellant has asserted that the result of this holding, wherein the presumed character of the facts to which the order applied was given effect rather than those facts themselves, was a judgment not supported by competent evidence, and which

> "* * * operates to take appellant's property without due process * * * of law, contrary to sec. 1, Fourteenth Amendment, U. S. Constitution * * *" (par. 42, motion, C. C. A. See assignment 45, petition, and par. 3, motion, Sup. Ct. of Tex.)

3. *Denial of a lawful determination of the claim of confiscation arising from undervaluation of appellant's property.*

The Court of Civil Appeals did not consider appellant's assignments raising this question (assignments 13, 14, 18, 19, 20, 29, 31), treating them as presenting mere questions of practice. The Court of Civil Appeals did not consider, weigh or pass upon the conflicting evidence of property

value. Instead, it proceeded on the theory that it was authorized to "* * * pare down valuations unsparingly * * *", and its method of paring down was to select the lowest figure from the testimony upon value presented by any witness at the trial. The question has been appropriately reserved (pars. 32, 44, 68, 69, 73-75, 85 & 87, motion, C. C. A.: assignments 23, 28, 31, 32, 37, and 66, petition, and par. 7, motion, Sup. Ct. of Tex.).

4. *Denial of a lawful determination of the claim of confiscation arising from the inadequate allowance for depreciation reserve.*

Similarly, the Court of Civil Appeals refused to pass upon the assignments presenting this question, and failed to pass upon the competent evidence pertinent thereto, and the question has been appropriately reserved (pars. 35, 68, 69, 73-75, motion, C. C. A.: assignments 23, 28, 31, 32 and 67, petition, and par. 8, motion, Sup. Ct. of Tex.).

5. *Unlawful determination of confiscation by consideration only of evidence deemed to support the order.*

This question was first presented by the opinion of the Court of Civil Appeals. Appellant's set up by motion for rehearing that the court had given to testimony introduced by appellees

> "* * * the quality and legal effect of undisputed and indisputable evidence, and therefore appellant has been denied a trial in accordance with due process, * * * contrary to Sec. 1, 14th Amendment, U. S. Constitution * * *",

and that the court has entered judgment

> "* * * by reciting in its opinion certain testimony or purported testimony offered at the trial by appellees,

wholly ignoring all other testimony * * *, and without first requiring the trial court to decide the ultimate issues of fact made by such conflicting evidence, in violation of appellant's right to a trial of the issues of confiscation upon the independent judgment of a court, competent to determine the ultimate issues of fact from conflicting evidence, and to apply the law thereto, * * *" (pars. 28 and 29, motion, C. C. A. See assignments 36, 39 and 40, petition, and par. 10, motion, Sup. Ct. of Tex.).

6. *Unsupported finding of net return of more than 7 per cent of $700,000 for 1933 after enforcement of the order.*

The opinion of the Court of Civil Appeals states the following conclusion:

> "* * * and calculations based on the $700,000 valuation and the estimated difference in revenues between the 55 cent rate and the 75 cent rate, show a return of more than 7% for the year 1933."

Appellant asserted that the judgment in respect of confiscation entered upon such conclusion, which conclusion was without any evidence to support it, was repugnant to Sec. 1; 14th Amendment, U. S. Constitution (par. 25, motion, C. C. A. See assignment 8, presented in conjunction with assignments 4, 5, 6 and 7, petition, and par. 2, motion, Sup. Ct. of Tex.).

The record affirmatively negatives any such conclusion. The 1933 revenues under the 55 cent rate were shown by the evidence to be $138,256.85; the lowest operating expense figure for that year shown by the testimony was $93,298.46. The witness who testified to a reproduction cost new, less depreciation of $700,000, also testified to a depreciation reserve accrual of $25,000.00 per year to go with that figure

and offset the depreciation he had deducted. Hence the record shows:

1933.

Operating revenues	$138,256.85
Operating expenses	$ 93,298.46
Available for return and depreciation reserve	$44,958.39
Set aside $25,000 for depreciation reserve	$25,000.00
Available for return	$19,958.39

Rate of Return: 2-8/10 per cent of $700,000

Or, if only 3 per cent of $700,000 be taken for depreciation reserve, we have—

Net operating revenue	$44,958.39
Deduct 3 per cent of $700,000	$21,000.00
Available for return	$23,958.39

Rate of Return: 3-4/10 per cent of $700,000.

7. *Determination of confiscation upon the assumption resulting from average revenue figures for prior years, which assumption was disproved by concrete evidence of actual experience.*

During the trial, and after appellant had proved the non-recurring character of the very large amount of revenues for power plant and refinery sales which were in the average revenue calculations used by the Commission in making the order, appellees then introduced the testimony set forth in the following figures. This testimony shows operating re-

sults at the 75 cent rate, with the above nonrecurring revenues and gas expense eliminated:

	At the 75 cent Rate.				
For the year ended—	June 1929.	June 1930.	June 1931.	July 1932.	Dec. 1933.
Operating revenue.....	$222,516.93	237,989.24	206,577.17	179,059.79	158,768.22
Operating expense.....	118,368.34	137,731.40	112,370.46	109,973.16	93,298.46
Net revenue (before depreciation and income tax).....	$104,148.59	$100,257.84	$94,206.71	$69,086.63	$65,469.76

The record closed with this testimony. The Court of Civil Appeals used the above figures in the average revenue calculations set forth in its opinion, but only after elimination of about $80,000.00 from the operating expenses of the first four years. Such expenses had been included in all the testimony offered at the trial to show net revenues, and there was no competent evidence to support such action.

By motion for rehearing in the Court of Civil Appeals, appellant asserted that the use of such average revenue figures, the actual operation and confiscatory effect of the order being shown by undisputed evidence, was to employ calculations based upon purported prior profits to enforce confiscation from the effective date of the order,

> "* * * in violation of appellant's right to a trial in accordance with due process * * * and its right to just compensation, guaranteed by Sec. 1, 14th Amendment, U. S. Constitution" (pars. 2, 5, 43 and 161, C. C. A. See assignments 12-16 petition, and par. 4, motion, Sup. Ct. of Tex.).

8. *Unauthorized elimination of operating expenses from average revenue calculations:*

This action, first taken in the Court of Civil Appeals, and being without competent evidence to support it, was appro-

priately raised on Federal grounds by motion for rehearing (pars. 160, 161, and 162 C. C. A. See assignments 12, 58 and 59, petition, and par. 5, motion, Sup. Ct. of Tex.).

9. *Arbitrary selection of $700,000 as the rate base for determining confiscation.*

Appellant urged in its motion for rehearing that the Court of Civil Appeals had arrived at its conclusion with respect to confiscation

> "* * * by substituting for the * * * $885,000 fixed as rate base by the Commission a lower figure of $700,000 selected from conflicting evidence at the trial on which no proper finding has been made, and such holding and the court's judgment pursuant thereto violate appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution * * *"; and are "* * * in violation of appellant's right to a trial in accordance with due process * * *." (Pars. 27 and 30, motion, C. C. A. See assignments 9, 12, 41 and 42, petition, and par. 6, motion, Sup. Ct. of Tex.)

10. *Denial of all claims of confiscation because new rate not tested.*

The Court of Civil Appeals held:

> "* * * It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual

experience of the practical results of the rate. And while the equal protection, the due course, and the due process clauses of the fundamental laws of both state and nation guard against the taking of, or compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right under all conditions and circumstances to have a return upon the value of the property so used. If actual experiences for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may then be changed through proper channels. * * *

"In the instant case appellant has continuously charged and collected the 75¢ rate; hence no actual test has been made under the lower 55¢ rate. An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this court would not be warranted in holding that the lower rate was either confiscatory, or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant failed, as a matter of law, to show the rate either confiscatory or unjust or unreasonable. * * * And since an actual test of the new rate may bring in a larger return, by bringing about an increase in business, we do not feel warranted in setting the rate aside in absence of an actual test under the new rate. * * *

The record showed that, upon testimony of operating revenues and expenses most favorable to the validity of the order, and upon the rate base and depreciation allowance fixed by the Commission, the higher 75 cent rate had yielded 3-6/10 per cent net return in 1932, and 4-4/10 per cent net return in 1933. The record also showed that the 55 cent rate was not promulgated until June 13, 1933, and that it was voluntarily suspended by appellees so that they could try the validity of the order in the State courts. Where an enforcement suit is brought in the State court in accord-

ance with the procedure provided in Sec. 380, Title 28, U. S. C., and the suit is with respect to a proposed new rate, it is inherent in the character of the suit brought that the new rate cannot be tested before its validity is determined. To test the rate by putting it into effect pending the trial of this case would have given appellees the full relief they were seeking, and would make moot this, and any other similar enforcement suit.

The holding was questioned by appellant's motion for new trial as being inadmissible on the facts of this case, and as denying appellant an effective remedy to prevent confiscation (pars. 1, 4, 14, 57, 58 and 150, motion, C. C. A. See assignments 1, 2, 4 and 49, petition, and pars. 9 and 14, motion, Sup. Ct. of Tex.).

11. *Enforcing retroactive refund provisions without essential findings.*

This occurred when the Court of Civil Appeals reformed the judgment below, and the question was appropriately raised upon federal grounds by motion for rehearing (pars. 40, 151, 153 and 158, motion, C. C. A. See assignments 25 and 26, presented in conjunction with assignments 4 and 5, petition, and par. 11, motion, Sup. Ct. of Tex.).

12. *Denial of a trial in accordance with due process upon the issues of confiscation.*

Denial of lawful judicial review was a progressive and cumulative development in the courts of the State. The Court of Civil Appeals having refused to consider appellant's assignments upon the denial of such a trial below (assignments 13, 14, 18, 19, 20, 29, 31, 37, 39 and 41), the same assignments were reurged in appellant's motion for rehearing; and by other separate paragraphs of said motion, appellant urged that the trial below and the character

of appellate review which had been accorded it was a denial of due process, in contravention of Sec. 1 of the Fourteenth Amendment (pars. 18, 28, 31, 49-51, motion, C. C. A. See assignments 36, 37, 39, 40 and 51, petition, and pars. 10 and 14, motion, Sup. Ct. of Tex.)

13. *The Commission's order is void, because clearly confiscatory in its actual operation.*

The Commission prophesied in its order that the application of the 55 cent rate schedule

> "* * * will produce a net return in excess of seven per cent (7%) per annum on the present fair value of the properties, after provision for operations and reserve for depreciation."

Appellant asserted at each stage of this case after the testimony closed that, taking the fact findings of the Commission as to rate base and depreciation allowance, and taking only the testimony of revenues and expenses in 1932 and 1933 most favorable to appellees, and applying the order, the result is confiscation. Since the order was not enforced for 1932 and 1933 by the judgment of the lower court, this showing was asserted as showing the order confiscatory for the future (pars. 2, 9, and 234, motion for new trial, assignments 3, 6 and 9, Court of Civil Appeals).

The reformed judgment of the Court of Civil Appeals, which enforced the order from January 1, 1932, was attacked by motion for rehearing on the ground that, when tested upon the bases last above mentioned, the net return would be 1-1/10 per cent for 1932 and 2-1/10 per cent for 1933, hence the order was confiscatory and void, operated to deny appellant just compensation and took said property and the use thereof without due process, contrary to Section 1 of the Fourteenth Amendment (pars. 3, 6, 9, 45, 146 and 157, motion, C. C. A. See assignments 4, 5, 7, 26, 46-48, petition, and pars. 1 and 14, motion, Sup. Ct. of Tex.)

The question presented, as the cumulative effect of the errors separately assigned, is that the State, through its Railroad Commission, is attempting to secure a result forbidden by the Federal Constitution, requiring the order to be held void and the judgment enforcing it reversed.

The Grounds Upon Which It Is Contended That the Questions Involved Are Substantial.

This is not a case in which the claim of confiscation depends solely upon "* * * whether the evidence requires the conclusion that by reason of the inadequacy of the valuation the result is confiscation." *Los Angeles Gas & Electric Co.* v. *Commission,* 289 U. S. 287, 315-316. Nor does the claim depend upon a like conclusion with respect to the inadequacy of the depreciation reserve accrual. Resort need not be had to speculation and prophecy, nor is there call to resolve the uncertainties of conflicting testimony. The order was retroactive in effect and at the trial full evidence as to two years actual operations subject to the order were in evidence. Accept the rate base, and the allowance for depreciation reserve, fixed in the assailed order, take from the evidence with respect to completed operations only that most favorable to the order and the undisputed result is a net return of 3-6/10 per cent for 1932 and of 4-4/10 per cent for 1933 at the 75 cent rate. The same calculation shows that if the 55 cent rate is applied a net return of 1-1/10 per cent for 1932 and of 2-1/10 per cent for 1933 results. This is denial of just compensation by so wide a margin upon the Commission's own rate base and depreciation allowance, as to make inapplicable the so-called "test" cases. Cf. *Willcox* v. *Consolidated Gas Company,* 212 U. S. 19; *Cedar Rapids Gas Company* v. *Cedar Rapids,* 223 U. S. 655, and similar cases. Instead, the case comes quite clearly within the principle of *Northern Pacific Railway* v. *Department of Public Works,* 268

U. S. 39, 45, where it was held that if existing rates are confiscatory there can be no basis for requiring a test of lower rates in the future. To hold otherwise would be to prefer prophecy to experience which was expressly condemned in *West Ohio Gas Company* v. *Commission* (No. 2), 294 U. S. 79, 82.

This case is likewise peculiar in that there was no opportunity to test the rate here in question. The 40 cent rate fixed by the city council was suspended by the appeal to the Railroad Commission and was found by the Commission to be unreasonable and the 55 cent rate substituted. Thus from January 1, 1932 (the effective date of the order), until June 13, 1933 (the date of entry of the order), the 55 cent rate was not in existence to be put to a test. After the Commission's order was entered, appellees filed this suit to enforce the order and themselves caused the order to be suspended by the State court. Thus at all times except the short period between the date of the Commission's order and the date of the filing of this suit there has either been no 55 cent rate, or the rate has been suspended by appellees' own action.

It is to be noted that the above showing of confiscation does not require the use of the much higher valuation asserted by appellant, and supported by substantial evidence, which, if accepted, would result in an even greater degree of confiscation. No finding as to the value of the property was made in the trial court and the Court of Civil Appeals made no such finding. Instead, it arbitrarily selected for its calculations the lowest figure offered by any witness at the trial and such figure related solely to reproduction cost new, less depreciation. The court ignored both the Commission's finding of fair value and all other evidence tendered by either party, and expressly negatived any finding of fair value by stating that it was authorized to "pare down values unsparingly". The court characterized the

Commission's valuation as "generous" because it included a pipe line and gathering system used only one time during the fiscal year ended July, 1932. The uncontroverted evidence both before the Commission, and at the trial, established that this property was in constant use prior to such 12 months period, when it was shut down for repairs, and that it was again put back in service and used throughout the winter heating season 1932-1933. The court ignored this evidence.

Since the Commission's rate would clearly fail to yield appellant a reasonable return upon the fair value of its property, used and useful in rendering the service, the enforcement of the order would deprive appellant of its property without due process of law in violation of the Fourteenth Amendment. *West* v. *Chesapeake & Potomac Telephone Company*, 295 U. S. 662, 671, *Bluefield Company* v. *Public Service Commission*, 262 U. S. 679, 690, *Board of Commissioners* v. *N. Y. Telephone Co.*, 271 U. S. 23, 31.

So far as the judgment below requires refunds to be made for periods prior thereto it is plainly invalid for want of adequate findings to support it. No finding was made by the trial court and none by the appellate court with respect to value, rates of return, depreciation reserve accrual and net revenues available for return before and after refund for either of the years involved. Such findings with respect to each year involved were essential to support the requirement of refunds and to compel appellant to make such refunds in the absence of such findings would deprive it of its property without due process of law in contravention of the Fourteenth Amendment. *Smith* v. *Illinois Bell Telephone Company*, 282 U. S. 133, 161, 162.

In other respects the judgment below denied appellant due process. Appellant contended for, and offered evidence in support of, a fair value in excess of $1,225,000 and asserted that the $885,00 valuation found by the Commission was arbitrarily and unreasonably low. It likewise con-

tended, and offered evidence to show, that the annual rate of reserve accrual fixed by the Commission was so inadequate as to amount to confiscation. *United Railroads* v. *West*, 280 U. S. 234, 254. Appellant's evidence on these points was ignored by the Court and resort was had to the "rough and ready" device of selecting and considering only the lowest figure in the record for reproduction cost new, less depreciation, which action was similar to that condemned in *West* v. *Chesapeake & Potomac Telephone Company, supra*, p. 679. The court also failed to give any consideration to other evidence introduced by appellees themselves indicating a much higher value than that arbitrarily selected by the court. All this was done upon the apparent theory that the order was to be enforced if there was any evidence in the record to support it and is a plain denial of due process. *St. Joseph Stockyards Company* v. *United States*, 298 U. S. 38, 49-54, *Baltimore & Ohio R.* v. *United States*, 298 U. S. 349, 368, *Ohio Valley Water Company* v. *Ben Avon Borough*, 253 U. S. 287, 289, *Chicago B. & Q. R. Company* v. *Osborne*, 265 U. S. 14, 16-17. Further, the court below ignored and refused to give legal effect to the evidence showing the actual result of enforcing the order from its effective date to shortly before the date of trial, which evidence demonstrated without dispute that the enforcement of the order would clearly deny appellant just compensation. *West Ohio Gas Company* v. *Commission* (No. 2), *supra*, p. 81. Thus the practical effect of the court's action was to make irrebuttable the presumption in favor of the validity of the order, contrary to the rulings of this court. *Borden's Company* v. *Baldwin*, 293 U. S. 194, 209, *Baltimore & Ohio R. Company* v. *United States, supra*, at p. 378.

In making calculations to uphold the order the court below used average revenues with respect to prior years, reflecting conditions greatly different from those to which the order applied and which give results in direct conflict with the evidence showing the actual operation and effect of the order. The practical result was to use past profits to offset

present losses. This was not due process. *Board of Commissioners* v. *N. Y. Telephone Co., supra,* pp. 31-32, *West Ohio Gas Company* v. *Commission* (No. 2), *supra,* p. 81, *Atchison, etc. Railway Company* v. *United States,* 284 U. S. 248, 260-263. Furthermore, in making these average revenue calculations, the court arbitrarily eliminated some $80,000 of operating expenses, proved by appellant to have been actually incurred in good faith, without any evidence to support such elimination, in violation of appellant's constitutional rights. *West Ohio Gas Company* v. *Commission* (No. 1), 294 U. S. 63, 72.

Finally, the court based its judgment upholding the order in part upon material findings not supported by evidence, which likewise was a denial of due process. *Northern Pacific Railway* v. *Department of Public Works, supra,* p. 43. The court made the following specific findings:

> "So when the property valuation is pared down to this lowest valuation (about $700,000.), and doubtful items of expenses are deducted, the net revenues received by appellant under the 75 cent rate for the year ending December 31, 1933, would afford more than a 11 per cent return. And calculations based on the $700,000. valuation and the estimated difference in revenues between the 55 cent rate and the 75 cent rate, show a return of more than 7 per cent for the year 1933."

The opinion of the court does not disclose the basis of these findings but there is no combination of figures in the record which will come anywhere near producing the results found by the court.

The cumulative effect of what the Court of Civil Appeals did in upholding the validity of the order was to deprive appellant of that independent judicial review of both the facts and the law which is essential to a proper judicial review of a rate order claimed to be confiscatory, if appellant is to be afforded the equal protection of the laws and due process of law guaranteed to it by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Ohio Valley Water Company v. *Ben Avon Borough, supra; St. Joseph Stockyards Company* v. *United States, supra; Baltimore & Ohio Railroad Company* v. *United States, supra.*

The substantial nature of the questions involved is apparent when it is considered that there is evidence in this record of two years actual operation under the assailed order and such order was upheld by the court below only by departing from the standards of judicial review established by this court for cases of this nature and deciding Federal questions in a manner inconsistent with prior decisions of this court. Necessary fact findings were entirely absent in the courts below and such as were made were without evidence to support them. Not only is appellant entitled to relief in this court from the clearly shown confiscation of its property, but the nature of the State court's departure from the standards of judicial procedure laid down by this court are such as to require correction by this honorable court. The correction of these errors is all the more important because, under the Johnson Act (Subd. (1), Section 41, Title 28, U. S. C., as amended May 14, 1934) confiscation cases now will ordinarily be first tried out in the courts of the States. Unless the State courts are required by this Court to accept and follow the standards of procedure heretofore established by this Court, and to follow this Court's requirements with respect to findings of fact on essential issues, the burdens of this Court on appeal will be increased and the rights of litigants in rate cases gravely impaired.

Cases Supporting Jurisdiction.

In addition to the cases cited above the following support the jurisdiction of this honorable Court:

(*a*) The rate reduction and refund order of the Railroad Commission of Texas is a statute of the State within the meaning of Sec. 344 (a), Title 28, United States Code.

Williams v. *Bruffy*, 96 U. S. 176, 182-184;

Bluefield Co. v. *Pub. Serv. Com.*, 262 U. S. 679, 683;

Live Oak Assn. v. *R. R. Com.*, 269 U. S. 354, 356;
King Manufacturing Co. v. *City Council of Augusta*, 277 U. S. 100, 112-114;
West Ohio Gas Co. v. *Comm'n.* (No. 1), 294 U. S. 63.

(*b*) The judgment appealed from is a final judgment in the highest court of the State in which a decision could be had:

Bacon v. *Texas*, 163 U. S. 207, 215;
Sullivan v. *Texas*, 207 U. S. 416, 422;
San Antonio & A. P. R. Co. v. *Wagner*, 241 U. S. 476, 477.

Opinions Appended.

The opinion of the Court of Civil Appeals entered October 30, 1935 (unofficially reported 89 S. W. (2) 1094), is attached hereto as Appendix "A"; and the opinion of the Railroad Commission of Texas entered June 13, 1933 (unofficially reported 2 P. U. R. (N. S.) 503), is attached hereto as Appendix "B". No other opinion was entered by the Court of Civil Appeals, and no opinions have been entered either by the trial court or by the Supreme Court of Texas.

The above and foregoing is presented by United Gas Public Service Company, together with its petition for the allowance of an appeal in this case to the Supreme Court of the United States, as its separate typewritten statement, particularly disclosing the bases upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review said final judgment of the Court of Civil Appeals.

Dated this 15th day of January, 1937.

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant,
United Gas Public Service
Company.

APPENDIX A.

OPINION OF THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS—Rendered October 30, 1935.

No. 8176

UNITED GAS PUBLIC SERVICE COMPANY, Appellant,

v.

THE STATE OF TEXAS ET AL., Appellees.

Appeal from District Court of Travis County.

In February, 1909, the City of Laredo granted certain individuals a 25-year franchise to construct and operate a natural gas distribution system in said city. The franchise and all rights thereunder were acquired by appellant through the mesne conveyances of several predecessors. The ordinance and some of the orders and proceedings here involved occurred before appellant acquired the franchise; but it is bound by them, and will be considered as having owned and operated the franchise at all times.

From the year 1921 to December, 1931, the natural gas rate for domestic use in Laredo was 75c. per M C. F., with 10% discount if bill was paid within 10 days from date, and with a minimum monthly bill of $1.00 per customer. On December 15, 1931, the City of Laredo, a Home Rule chartered city, acting under the authority given by Art. 1175, R. S. 1925, by ordinance fixed the natural gas rate for domestic use at 40c per M C. F., with 10% discount if bill was paid in 10 days, and with a minimum monthly bill of $1.00 per customer, the ordinance providing that the rate would be effective from January 1, 1932. An appeal under Art. 6058, R. S. 1925, was perfected from the ordinance to the Railroad Commission. Appellant filed a bond in the sum of $20,000.00, conditioned that it would refund any excess rates over the rates finally determined to be fair and reasonable. Pending said appeal appellant filed an application for an increase of the 75c. domestic rate, which was not acted upon by the City of Laredo because of the

pendency of the matter before the Commission; and thereafter appellant perfected an appeal, based on this application to the Commission, filing a bond conditioned as the one in the first appeal. The Commission consolidated the two appeals, heard them on their merits, and on June 13, 1933, promulgated its order fixing the natural gas rate for domestic use at 55c. per M C. F., with minimum monthly bill of $1.00 per customer. The order provided for a 10% penalty if bill was not paid within 10 days from date; provided that the 55c. rate would be effective from January 1, 1932; and further provided that appellant refund to the customers the difference in the amount collected after January 1, 1932, under the 75c. rate and the 55c. rate, appellant having continuously collected the 75c. rate.

On June 29, 1933, appellant filed its bill in equity in the Federal District Court, naming the members of the Railroad Commission, the Governor, the Attorney General, and the City of Laredo and its governing officials as defendants, seeking to restrain them from enforcing the 55c. rate pending a hearing of the matter by a statutory Federal court of three judges; alleging that because the 55c. rate would not afford appellant a reasonable return on the fair value of its property used in the public service, the rate order was confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of the Federal Constitution.

On July 26, 1933, appellees, the parties named as defendants in appellant's suit in the Federal court, filed this suit in the District Court of Travis County, alleging that appellant had filed its aforementioned bill in equity in the Federal court, and that appellees brought this suit in the nature of an appeal under the terms of Art. 6059, R. S. 1925; "but that such appeal is not taken because plaintiffs (appellees) are dissatisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of the court and its venue to hear and finally determine the matters in controversy, and to enforce the said order, if it should be deemed to be valid upon final hearing," which order appellant was alleged to have continuously violated since its

promulgation; and prayer was that appellant be enjoined from charging or collecting any rates for natural gas in excess of the 55c. rate fixed by the Commission, and that the City of Laredo recover for the consumers the difference in the amount collected under the 75c. rate and the 55c. rate. Appellees also requested that pending the final determination of the cause, an order be entered staying all proceedings by the Commission or City of Laredo in the collection of the 55c. rate; which order was entered by the State District Court on the date the petition was filed.

On August 1, 1933, appellant and appellees appeared before the statutory three-judge Federal court and appellees' motion to stay all proceedings in that cause until final disposition of the Travis County District Court cause was granted; the statutory Federal court also enjoined the enforcement of the 55c. rate, "pending the final disposition of the cause" in the State District Court. On the date of this stay order by the three-judge court, appellant filed its petition in the Federal District Court, praying for the removal of the cause from the State to the Federal court. Appellees answered with a motion to remand the cause to the State Court; which motion was granted.

In the State court appellant filed an answer, attacking the 55c. rate, alleging that the rate order was based on assumption contrary to the facts with regard to the average annual revenues of appellant, and was therefore not supported by any evidence; and that because the 55c. rate did not yield a net return of 7% per annum from January 1, 1932, down to the date of the trial (in April, 1934), and would not yield a reasonable return on the fair value of the property used in the public service, the rate order was therefore unjust and unreasonable and confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of both the State and Federal Constitutions; and prayer was that the appellees be restrained from enforcing the alleged void order.

Under the pleadings and proceedings, the suit filed by appellees in the District Court of Travis County was merely one to bring appellant within the jurisdiction of the State court as provided for by Sec. 266 of the Judicial Code of

the United States (28 U. S. C. A., Secs. 368 *et seq.*), in order to determine the validity of the 55c. rate; and the amended answer of appellant therein, seeking to enjoin the enforcement of the 55c. rate, was in effect an appeal by it under Art. 6059, to determine whether the rate order was unjust and unreasonable as to appellant; and to determine the additional question of whether the enforcement of the rate would result in confiscation of appellant's property used in the public service, rendering the rate order unconstitutional. Upon the issues thus joined in the State court a trial was had to a jury. The court's charge consisted of definitions and instructions, and the following special issue:

> "Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a $0.55 gas rate to residential consumers within the City of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust to defendant United Gas Public Service Company? Answer this question 'Yes,' or 'No'."

The jury answered the issue "No." Accordingly, the judgment enjoined appellant from charging rates in Laredo in excess of the 55c. rate fixed by the Commission, until changed by the Commission or other authorized authority; dissolved the stay order of June 26, 1933; and provided for a suspension of the judgment upon the perfecting of an appeal and the filing of a supersedeas bond in the sum of $30,000. The judgment declared the Commission's order fixing the 55c. rate to be valid, except that portion making the 55c. rate effective from January 1, 1932, and for a refund of the difference between the 75c. rate and the 55c. rate, but without prejudice to any rights for the collection of such difference in rates should the 55c. rate be held valid on appeal. Appellant has appealed from the portion of the judgment enjoining it from charging in excess of the 55c. rate, and has filed a supersedeas bond. Appellees have appealed from the portion of the judgment denying a recovery of refunds.

Appellant briefs the appeal in two parts. In "Part I" and by propositions 1 to 10, appellant seeks to have the

judgment below reversed and judgment rendered for it. In "Part II" of the brief and by propositions 11 to 79, appellant contends that the judgment should be reversed and the cause remanded, because of several alleged errors of practice.

We have reached the conclusion that appellant not only failed to establish its claim for reversal and rendition of judgment in its favor, but that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the *quantum* and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55c. rate order was either unjust and unreasonable or confiscatory. In view of this conclusion, all questions of practice presented in "Part II" of the brief go out of the case.

The Commission found in its rate order that the fair value of appellant's property used in the public service as of August 1, 1932, was $885,000; that a 3% annual reserve accrual for depreciation on such valuation was fair and reasonable; and that a 7% annual return on such valuation of the property was fair and reasonable; and that a gas rate of 55c. for domestic use was fair and reasonable. However, the Commission reluctantly included in the property valuation an item of $124,688, representing the Pescadito-Jennings Transmission pipe line of approximately 26 miles, which was only used one day during the last 12 months of the operating period, and which the Commission found could "neither be safely nor profitably used in transporting gas" to Laredo. The Commission also included the West Jennings Gathering System at a value of $10,342, although it found that these "two property items are neither used nor are they necessary as standby equipment." There was also evidence before both the trial court and the Commission, which tended to show the fair value of appellant's property to be about $700,000; and that a 2% annual accrual for depreciation would be fair and reasonable. Appellant's witnesses placed its value at slightly over one million dollars. When the properties serving Laredo were transferred to appellant by its subsidiary and predecessor in title, Texas Border Gas Company, on October 31, 1932, the journal entry

on appellant's books reflected a total value of $934,798.02, with a reserve for depreciation of $78,632.20, which included the Roma-Jennings pipe line not servicing Laredo, and which with other property was valued on the books of appellant's predecessor in title in 1929, at $848,232.98. The separate value of the Roma-Jennings pipe line was not shown; but based upon these book entries and other facts, the expert witness for appellees arrived at his $698,047 present valuation of appellant's property used in servicing gas in Laredo.

On the hearing before the Commission the operating revenues and operating expenses for slightly more than four fiscal years next preceding the hearing were used. This operating period extended from June 30, 1928, through July 31, 1932, the four fiscal years being the three twelve-month periods ending, respectively, June 30, 1929, 1930 and 1931, and the twelve-month period ending July 31, 1932. The reasons stated by the Commission in the rate order for using said operating periods and employing the method used are, as follows:

> "The Company presented a 'set up' of operating revenues and expenses for the 12 months period ending July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar 'set up' covering the years ending June 30, 1929, 1930 and 1931, and for the last year ending July 31, 1932, a period of four years; it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken alone as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken as the test period, nor should an average of these two years be taken.

"Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the three years 1930, 1931 and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

"The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year, 1930.

"Therefore, in the light of ample lawful precedent for the taking of an average of four successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932, constitutes the test period for the computation of the rate stucture upon which a fair return is to be predicated."

The gross revenues and their sources for the four fiscal years as obtained from appellant's calculations were, as follows:

"12 Months Ended.	Central Pow. & Lt. Co. & Motor Fuel Products Co.	Other Sources.	Total.
June, 1929.....	$68,188.69	$222,516.93	$290,705.62
June, 1930.....	91,603.56	237,989.24	329,592.80
June, 1931.....	56,415.13	206,577.17	262,992.30
July, 1932.....	15,398.30	179,126.27	194,524.57"

The total operating revenues, operating expenses and net revenues as obtained from appellant's calculations for the four years were, as follows:

	"Year Ended June 30, 1929.	June 30, 1930.	June 30, 1931.	July 31, 1932
Op. Revenues.....	$290,705.62	$329,592.80	$262,992.30	$194,458.09
Op. Expenses.....	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Revenue.....	$149,452.24	$162,331.42	$129,347.66	$ 80,308.47"

The gross revenues and their sources for the additional operating period used in the trial court on appeal were, as follows:

"12 Mos. Ended.	Revenues from Central Power & Lt. Co. and Motor Fuel Prod. Co.	Other Revenues.	Total.
Dec. 31, 1932.....	$8,790.20	$174,987.21	$183,777.41
Dec. 31, 1933.....	54.40	158,699.24	158,753.64"

The decrease in industrial revenues was because the Motor Fuel Products Company had ceased to do business, due to large operating losses; and because the Central Power & Light Company had completed and put in operation in Laredo its main transmission line from its central operating plant at another point, the Laredo plant, which appellant served with gas for fuel, had become a mere emergency or standby plant, and will not hereafter be used except for short periods during emergencies.

Based upon the aforementioned evidence, an expert accountant employed by the appellees, after deducting the non-recurring industrial revenues and certain questioned items of expenses, computed the net returns for each of the (5) twelve-month operating periods, ending June 30, 1929, 1930, 1931, July 31, 1932, and December 31, 1933, respectively, and averaged the annual net operating revenues available for the five years, as follows:

	12 Mo. Period Ending June 30, 1929.	12 Mo. Period Ending June 30, 1930.	12 Mo. Period Ending June 30, 1931.	12 Mo. Period Ending July 31, 1932.	12 Mo. Period Ending Dec. 31, 1933.
Gross Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
(S. F. Vol. III, p. 1786.) Less Non-recurring Revenues (S. F. Vol. IV, p. 2115.)	68,188.69	91,603.56	56,415.13	15,398.30	54.40
Total Recurring Revenue:	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
(S. F. Vol. II, pp. 1083–84.) Gross Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
(S. F. Vol. III, p. 1786.) Less Non-Recurring Gas Purchases (S. F. Vol. II, pp. 1083–84.)	22,885.04	29,529.98	21,274.18	4,176.46	.....
	$118,368.34	$137,731.40	$112,370.46	$109,973.16	$93,298.46
Less Questioned Items of Operating Expenses (S. F. Vol. III, p. 1795.)	9,663.33	16,541.54	20,198.69	27,347.05	.....
Total Net Operating Expenses:	$108,705.01	$121,189.86	$92,171.77	$82,626.11	$93,298.46
			Recapitulation.		
Total Net Recurring Revenue:	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
Less: Total Net Operating Expenses:	108,705.01	121,189.86	92,171.77	82,626.11	93,298.46
Net Available Return:	$113,811.92	$116,799.38	$114,405.40	$96,433.68	$65,469.76

Average Annual Net operating revenue for the Five 12 months' period	$101,384.02
Average Annual Net operating revenue for the Four 12 months' periods, which 4 periods were presented in evidence before the R. R. Commission (June 30, 1928, to July 31, 1932)	$110,362.59
Average Annual Net operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933	$92,102.94
Average Annual Net operating revenue for the Two 12 months' periods ending July 31, 1932, and Dec. 31, 1933	$80,951.72

In applying the several average annual net operating revenues appearing above, the following average Annual Rates of Return are found:

1. Average net operating revenue for the Five 12 months' periods	$101,384.02
Less annual depreciation @ 3% on $885,000.00	26,550.00
Amount available for return at existing rates	$74,834.02

Average Annual Rate of Return, i. e., $885,000.00 divided into $74,834.02, equals 8.46%.

2. Average net operating revenue for the Four 12 months' periods, which 4 periods were presented in evidence before the Railroad Commission (June 30, 1928, to July 31, 1932)	$110,362.59
Less annual depreciation @ 3% on $885,000.00	26,550.00
Amount available for return at existing rates	$83,812.59

Average Annual Rate of Return, i. e., $885,000.00 divided into $83,812.59, equals 9.47%

3. Average operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933	$92,102.94
Less 3% annual depreciation (S. F. Vol. III, p. 1745)	26,550.00
Amount available for return at existing rates	$65,552.94
Average Annual Rate of Return, i. e., $749,990.00 (Tr. pp. 25 and 36) divided into $65,552.94, equals	8.74%
Average Annual Rate of Return, i. e., $885,000.00 divided into $65,552.94, equals	7.41%
4. Average operating revenue for the Two 12 months' periods ending July 31, 1932, and Dec. 31, 1933	$80,951.72
Less 3% annual depreciation (S. F. Vol. II, p. 1430)	25,000.00
Amount available for return at existing rates	$55,951.72
Average Annual Rate of Return, i. e., $700,000.00 divided into $55,951.72, equals	7.99%
Average Annual Rate of Return, if the items of $124,668 and $10,342 (Total $135,010) which were considered by the Commission as neither used and useful, nor necessary (Tr. pp. 25 and 36) are deducted from the rate base of $885,000; $749,990 divided into $55,951.72, equals	7.46%

Appellees offered evidence tending to show that if the 55c. rate had been actually put into effect, it would have produced approximately 1,500 additional meters, at $1.00 per month minimum, and would have increased the use of gas by present consumers. Appellant's evidence tended to

show that any such increase in revenues because of the lower rate was speculative. Appellant has continuously charged and collected the 75c. rate.

The exact calculations on which the Commission computed the 55c. rate do not appear in its rate order, nor in the record on appeal. But appellant insists that it appears from the opinion that the Commission found the fair value of the property to be $885,000, its annual depreciation to be 3%, and 7% to be a reasonable annual return thereon, and applied such findings to the average net revenues received by appellant in the four fiscal years used in the hearing. Appellant contends that "the practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions." And by propositions 1 to 10, appellant in one way or another, contends that the evidence showed, as a matter of law, that the 55c. rate order was confiscatory, and *per se* unjust and unreasonable, on two grounds, as follows:

1. That because the existing 75c. rate did not yield a 7% return on the $885,000 valuation of the property from January 1, 1932, the effective date of the city ordinance, to December 31, 1933, or down to the date of the trial in April, 1934, the lower 55c. rate would necessarily not yield a reasonable return on appellant's property.

2. That in making its calculations for the 55c. rate the Commission assumed that appellant's revenues from January 1, 1932, would equal its revenues for the period beginning, June 30, 1928, and ending July 31, 1932, which assumption was contrary to the facts, because it was assumed that the revenues from the two industrial sources which had stopped coming in were still being collected, and because of existing depression conditions, revenues had de-

creased, and for which reasons the 55c. rate would not afford a reasonable return on the fair value of appellant's property.

The contention that the rate order is unenforceable because the existing 75c. rate did not yield a 7% return on the $885,000 property valuation from January 1, 1932, to December 31, 1933, the lower 55c. rate would necessarily not afford a reasonable return, is not sustained. The year ending December 31, 1933, was the last fiscal year of the five-year period of business operations used in the trial court. It was admittedly an abnormal year, because of high temperature prevailing during the winter months; and because of a decrease in the purchasing power of consumers, due to the business depression prevailing everywhere. The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years; the future being gauged as nearly as possible by the past experience. The reason for the rule is the fact that any business may fluctuate from year to year because of changing conditions or circumstances which may affect it; ordinarily, a test of five years or more next preceding the inquiry, if available, is selected. It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate. And while the equal protection, the due course, and the due process clauses of the fundamental laws of both state and nation guard against the taking of, or compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right

under all conditions and circumstances to have a return upon the value of the property so used. If actual experience for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may then be changed through proper channels. Knoxville v. Knoxville Water Co., 212 U. S. 1; Wilcox v. Consolidated Gas Co., 212 U. S. 19; Public Service Com. v. G. N. Utility Co., 289 U. S. 130; Georgia Power Co. v. Com., 262 U. S. 625; Louisville v. Cumberland Tel. & Tel. Co., 225 U. S. 430; Brush Electric Co. v. City of Galveston, 262 U. S. 443; Reno P. L. & W. Co. v. Com., 298 Fed. 790; Los Angeles Gas & Electric Cor. v. Com., 58 F. (2) 256 (affirmed 289 U. S. 287); Denver Union Stockyards Co. v. United States, 57 F. (2) 735; St. Joseph Stockyards Co. v. United States, 11 Fed. Sup. 322.

In the instant case appellant has continuously charged and collected the 75c. rate; hence no actual test has been made under the lower 55c. rate. An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this court would not be warranted in holding that the lower rate was either confiscatory, or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant failed, as a matter of law, to show the rate either confiscatory or unjust or unreasonable. The $885,000 valuation of appellant's property by the Commission was extremely liberal, because it included at a valuation of more than $135,000 the two pipe lines which the undisputed evidence showed to be useless except as emergency or standby equipment, and their value for such purposes was not shown. So when the property valuation is pared down to this lowest valuation (about $700,000), and doubtful items of expenses are deducted, the net revenues received by appellant under the 75c. rate for the year ending December 31, 1933, would afford more than a 11% return. And calculations based on the $700,000 valuation and the estimated difference in revenues between the 55c. rate and the 75c. rate, show a return of more than 7% for the year 1933. But even if the lower rate did not or would not yield a return of 7% for the year 1933, this court would not be warranted in enjoining

the enforcement of the rate, because the test period was too short, no actual test was made under the lower rate and the undisputed evidence showed the year to be abnormal.

Nor do we sustain appellant's second above stated ground, as showing that the 55c. rate would not as a matter of law afford a reasonable return on its property, because the Commission assumed, contrary to the evidence showing loss of non-recurring industrial revenues and decreasing revenues during the year 1932, that the revenues from and after January 1, 1932, would equal the average revenues for the June, 1928, to July, 1932, period used in the calculation fixing the 55c. rate. If by this proposition appellant contends that only the operating revenues and expenses for the year ending July 31, 1932, should have been used by the Commission in making its calculations and in fixing the 55c. rate, then we have hereinabove determined the question against appellant.

Nor do we sustain the ground urged, if it is the contention of appellant that the Commission erroneously based its calculations in fixing the 55c. rate upon the average net revenues for the four fiscal years used by it, because the "practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions."

As hereinabove stated, the calculation upon which the Commission based the 55c. rate order is not shown in the evidence; nor does it appear to be material on this appeal as to what method or calculation the Commission used, because the only ground alleged by appellant as showing the rate order to be either confiscatory or unjust and unreasonable was that the 55c. rate would not afford a reasonable return on the fair value of appellant's property used in the public service. Under our statutes and practice, the trial of both of these issues on the appeal to the court is

de novo, and is controlled by the principles governing the scope of a court review on appeal of the legislative function of the Commission in making or fixing a public utility rate. Lone Star Gas Co. v. Commission, — S. W. (2d) —, recently decided by this court, in which case we discussed at length the scope of judicial appellate review of a public utility gas rate fixed by the Commission. Suffice it to say here that rate-making is essentially a legislative function; that rates fixed by the Commission have the same force and effect of statutes and are subject to court review to the extent only as statutes of the same import are so subject, with the additional statutory authority of the court to determine whether the rate is unjust and unreasonable, and the inherent power of the court to determine the constitutional question of confiscation. M., K. & T. Ry. Co. v. Commission, 3 S. W. (2d) 489, affirmed 13 S. W. (2d) 678. That the rate fixed by the Commission is presumed to be valid, reasonable and just until declared otherwise by a court of competent jurisdiction. R. R. Commission v. Uvalde Construction Co., 49 S. W. (2d) 1113. That in order to overcome this presumption in favor of the validity of the rate on the constitutional ground of confiscation, the burden of proof rests heavily upon the complaining party. Dayton Power & Light Co. v. Commission, 292 U. S. 290, 79 L. Ed. 832. That in order to set aside the rate as being unjust and unreasonable, the statute (Art. 6059) requires the complaining party to show "by clear and satisfactory evidence that such rate is unreasonable and unjust." That the complaining party attacking a rate as being unreasonable and unjust must allege facts which if proved would show the rate to be unjust and unreasonable as a matter of law; and to prove by clear and satisfactory evidence "which leaves no reasonable doubt in the judicial minds that the rate is unjust and unreasonable." R. R. Commission v. Weld & Neville, 96 Tex. 409; R. R. Com. v. Galveston Chamber of Commerce, 105 Tex. 101, 145 S. W. 573. That in advance of any actual test of the practical result of the new rate, the court on appeal will not disturb the rate where it is based upon conflicting evidence as to valuations of property, or as to any other item used as a basis for the calculation of the rate; because to do so would merely sub-

stitute the findings of the court or jury upon conflicting evidence for that of the Commission, and would therefore permit the court to exercise the legislative function of rate-making. R. R. Commission v. Shupee, 57 S. W. (2d) 295, affirmed 73 S. W. (2d) 505. And that by "resolving all doubts against" the appellant, "and using valuations pared down unsparingly," there would have been no reasonable doubt in the judicial mind that the 55c. rate was neither confiscatory nor unjust and unreasonable. Newton v. Consolidated Gas Co., 258 U. S. 165, 66 L. Ed. 547.

The auditor for Laredo showed in his above quoted calculations that the average net revenue for the five-year period used in the trial court, less annual depreciation at 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 8.46%. If under the rule that in absence of any actual test of the new rate, the court must resolve all doubts against appellant, and pare down unsparingly valuations, and if the lowest valuation shown by the evidence (about $700,000) is used in the calculation, then the average net return received by appellant under the existing rate for the five-year period, would yield an average annual return of more than 10%. The same calculations of the auditor also show that if the average net revenues for the four-year period used in the hearing before the Commission are utilized, such revenues, less 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 9.47%. If the lower $700,000 valuation is used in the calculation, the average net revenues for the four-year period would yield a return of more than 11%. Thus it was shown that under the existing rate appellant has received an average annual return, even through several depression years, of about 11% on the value of its property used in the public service. And since an actual test of the new rate may bring in a larger return, by bringing about an increase in business, we do not feel warranted in setting the rate aside in absence of an actual test under the new rate. Brush Electric Co. v. City of Galveston, 262 U. S. 443. And manifestly the evidence of appellant did not show, as a matter of law, that the lower 55c. rate would necessarily result in confiscation of its property; nor that the rate was unenforceable be-

cause unjust and unreasonable, when viewed in the light of aforementioned rules with regard to the quantum and character of proof required in such cases.

The rate order of the Commission, dated June 13, 1933, provided that the 55c. rate fixed by it should be effective from and after January 1, 1932, the effective date of the ordinance of the City of Laredo, which fixed the rate of 40c. The Commission's order further provided, as follows:

> "It is further ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the City of Laredo, for the benefit of the domestic consumers, the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order."

The trial court declared this provision of the rate order invalid and of no force and effect; but without prejudice to the rights of the City of Laredo to bring suit for the refund "should this provision be held valid upon final determination of this cause on appeal." By cross-assignments of error appellees seek to have this portion of the trial court's judgment reformed so as to declare said provision for the refund valid and enforceable.

We have reached the conclusion that the provision of the rate order making the 55c. rate retroactively effective as of January 1, 1932, and providing for the refund of any amount collected in excess thereof is valid and enforceable. The authority to initiate the proceeding to reduce the gas rate is in the City of Laredo under Art. 1175, and the utility is given the right of an appeal from the ordinance fixing the rate to the Commission under Art. 6058, the material portions of which read, as follows:

> "When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality.

> Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo."

The appeal to the Commission under the terms of this article is essentially to review the city ordinance fixing the gas rate, and since it "may make such order or decision in respect to the matter (rate) involved therein as it may deem just and reasonable," the Commission's functions are not only legislative but quasi-judicial as well. In the exercise of these reviewing and quasi-judicial functions the Commission is authorized to suspend, pending the appeal before it, the rate fixed by the city ordinance, and to require the utility to give a bond "on such terms and conditions as the Commission may direct." Accordingly on the appeal to the Commission, appellant filed its bond, which was approved and accepted by the Commission, and which bond was conditioned as follows:

> "* * * principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said city, any excess of rates or charges collected by the principal * * * over and above the rates or charges that shall be finally determined a fair and reasonable return. * * *"

The supersedeas bond filed in this appeal is similarly conditioned.

Since the Commission had the power to suspend the reduced city ordinance rate pending the appeal, it necessarily had the power to reinstate such rate if found to be just and reasonable as of its original effective date. Likewise the Commission had the power upon determining that the city ordinance rate was unjust or unreasonable, to substitute its own just and reasonable rate therefor, and to make it effective as of date of the city ordinance rate for which it was substituted.

It is further manifest that the powers given the Commission by Article 6058 to review a city ordinance rate on ap-

peal and to determine its justness and reasonableness, and if found to be unjust and unreasonable, to substitute its own just and reasonable rate therefor, are not only legislative and administrative functions, but quasi-judicial as well; and in the full exercise of such power it necessarily follows that the Commission had the power to make its own rate effective as of the date of the city ordinance rate, which it has reviewed and adjudicated as being unjust and unreasonable. See as dealing with quasi-judicial functions of utility commissions: Producers Refining Com. v. M. K. & T. Ry. Co. (Com. App.), 13 S. W. (2d) 680; Baer Bros. Merc. Co. v. Denver & R. E. Ry. Co., 233 U. S. 479; L. & M. Ry. Co. v. Finn, 235 U. S. 601. And since the Commission's functions are essentially to review and adjudicate the justness and reasonableness of the city ordinance rate on appeal, its jurisdiction necessarily relates back to the date of the initial proceedings in which the city ordinance rate originated and first became effective. The rule is settled that a public utility commission has the power to make its rate order retroactively effective as of any date after it has actually acquired jurisdiction of the cause; and in consequence may order the refund of excessive rates paid from and after the retroactively effective date of the rate order. See State ex rel Boynton v. Public Service Commission of Kansas, P. U. R. 1933a 415; State v. Public Service Commission (Mo.), 272 S. W. 957; Ill. R. R. Co. v. Best, 39 F. (2d) 658.

In accordance with our above conclusions, the judgment of the trial court is reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Commission valid and enforceable, and as thus reformed the judgment of the trial court will be affirmed.

Reformed and affirmed.
Filed October 30, 1935.

M. B. Blair,
Associate Justice.

APPENDIX B.

BEFORE THE RAILROAD COMMISSION OF TEXAS.

Gas Utilities Docket No. 49.

IN RE THE APPEAL OF TEXAS BORDER GAS COMPANY FROM AN ORDINANCE OF THE CITY OF LAREDO, TEXAS,

Joined and heard with

Gas Utilities Docket No. 63.

IN RE THE APPEAL OF TEXAS BORDER GAS COMPANY FROM THE FAILURE AND/OR REFUSAL OF THE CITY OF LAREDO, TEXAS, TO GRANT IT AN INCREASE IN DOMESTIC GAS RATES.

Heard: October 4 to October 11, 1932; November 9 to November 14, 1932.

Opinion and Order.

BY THE COMMISSION:

The City Council of the City of Laredo on December 15, 1931, enacted an ordinance which provides for the fixing of rates for natural gas, as follows:

40¢. per M.C.F. for domestic consumption;
12¢. per M.C.F. for industrial consumption;
30¢. per M.C.F. for hotel and restaurant consumption;
25¢. per M.C.F. for school, church and hospital consumption, and for use is gas engines.

The ordinance further provides for a discount of 10% for payment of bills within ten days of their rendition; and under its provisions, the ordinance became effective January 1, 1932.

At the time of the enactment of the ordinance, the prevailing rate for natural gas for domestic purposes (which rate had prevailed since the year 1921) was 75¢. per M. C. F. with a 10% discount for payment within 10 days, and a minimum monthly bill of $1.00. No fixed rates applied as to non-domestic consumers.

The Texas Border Gas Company, the company furnishing natural gas to consumers within the limits of the City of Laredo, not being satisfied with the provisions of the aforesaid ordinance, filed its appeal with the Commission and posted the required supersedeas bond, all in accordance with the provisions of Articles 6058-6059, R. C. S. of Texas (1925). These Articles provide, in substance, that when a municipality has, by ordinance, reduced existing gas rates the utility affected by such ordinance may appeal to the Commission and perfect such appeal by the filing of a bond conditioned as may be required by the Commission; and that the Commission after a hearing of the matter make such order as it may deem just and reasonable in the premises and that any party at interest, if dissatisfied with the order or orders so made by the Commission may have a further hearing in a District Court of Travis County, Texas.

Prior to the time set by the Commission for the hearing of this cause, the South Texas Gas Company, the company owning and operating the transmission properties and transporting the gas sold to the Texas Border Gas Company at the Laredo City Gate, was made a party to the proceeding.

Subsequently, the Texas Border Gas Company filed its application with the governing body of the City of Laredo for an increase in rates of natural gas supplied to domestic consumers on the following scale:

$1.50 net per month, which $1.50 would entitle a consumer to use 1000 cubic feet of gas during such month;

.90 net per M. C. F. for the next 2000 cubic feet of gas used during such month;

.70 net per M. C. F. for all additional gas used, during such month;

Minimum monthly bill $1.50 net.

No action having been taken on this application by the City of Laredo, at the expiration of 60 days after its presentation, the Texas Border Gas Company took the necessary steps to perfect its appeal to the Commission under the provisions of Article 6058 (supra).

The Commission thereupon entered its order consolidating the two appeals and set the hearing for October 4, 1932.

By agreement of the parties a rate of 5¢ per M. C. F. was stipulated as a fair and reasonable price of gas at the well.

By appropriate pleadings the United Gas Public Service Company, a Delaware Corporation, entered its appearance in both appeals, alleging in substance that it had acquired the properties of both the Texas Border Gas Company and South Texas Gas Company, and that it adopted the pleadings of both of the said companies theretofore filed with the Commission.

The matters at issue were heard by the Commission in hearings held at Laredo from October 4 to October 11, and from November 9 to November 14, 1932, at which time both the Gas Company and the City presented their evidence before the Commission; every phase of the controversy was fully presented, resulting in a stenographic record of some fourteen hundred pages and of more than twenty exhibits containing several hundred pages; and subsequent to the conclusion of the hearing, counsel for both the Company and the City prepared and filed with the Commission exhaustive briefs, which were of particular aid to the Commission to arriving at a just and fair solution of the matters before it, in this cause.

Texas Border Gas Company.

South Texas Gas Company.

Historical.

The Texas Border Gas Company, a Texas Corporation, and its predecessor, the Border Gas Company have been distributing natural gas in the City of Laredo since the year 1909, under a twenty-five year franchise granted by the City in February, 1909. During the year 1910 the original company (Border Gas Company) began and completed the construction of a transmission line from what was known as the Reiser Field, to the Laredo Gate, a distance of approximately 22 miles; during the same year it also constructed a distribution system in the City of Laredo. In the year

1916, the transmission line was extended for a distance of approximately 26 miles to what is known as the Jennings Field; in the years 1922 and 23, an additional transmission line of some 24 miles was laid to the Carolina-Texas Field.

From the year 1909 to April, 1928, the original company, the Border Gas Company, owned and operated the producing, the transmission and the distribution systems, supplying natural gas to the consumers, in the City of Laredo. In the month of April, 1928, that portion of the properties comprising the distribution system was acquired by the Texas Border Gas Company; the Transmission system properties were, at the same time, acquired by the South Texas Gas Company; and the producing wells and other production property were taken over by the South Texas Production Company, which latter company is not a party to these proceedings.

Inter-Related Companies.

Texas Border Gas Company and South Texas Gas Company are operated as units of the United Gas Public Service Company, which latter company is, in turn, a unit of the United Gas System. Both appellant companies are under common stock ownership and are under the same common management and control.

Texas Border Gas Company is a distributor of natural gas not only in the City of Laredo but also in the surrounding territory, which includes a number of small communities situated in that vicinity.

All gas distributed by Texas Border Gas Company in the City of Laredo is purchased by it from the South Texas Gas Company under the terms of a gate rate contract between the two companies, entered into on the 10th day of April, 1928, providing for the following scale of rates:

30¢ per M. C. F. for all gas sold and delivered to domestic consumers;

14¢ per M. C. F. for all gas sold and delivered to industrial consumers.

In view of the inter-related company operation and ownership, the gathering, transmission and distribution proper-

ties used and useful in serving the City of Laredo were appraised and valued as a combined property.

Statement of the Issues.

The major questions which present themselves for determination by the Commission in this case are the following:

1. What is the present fair value of the properties of the company, used and useful in serving the City of Laredo?

2. What is a fair and reasonable annual allowance for depreciation on the property of the company, used and useful in serving the City of Laredo?

3. What is a reasonable rate of return for a company supplying natural gas in the City of Laredo?

4. What schedule of rates will yield that return?

Allocation.

As the distributing company (Texas Border Gas Company) serves not only natural gas consumers in the City of Laredo, but also consumers in a number of other communities situated in the Laredo area, it becomes necessary to allocate to Laredo only that portion of the company's property used and useful in serving the rate payers in such city.

The company's engineer, Greene, applied a method of allocation under which he utilized certain percentages representing the ratio of the volume of gas in M. C. F. delivered to the Laredo City gate, to the total volume of gas delivered within the Laredo district, including Laredo (71.29%); and the ratio of the volume of gas delivered to consumers outside the Laredo district, to the total volume of gas delivered to the Laredo City gate (96.45%).

The city's engineer, Elroad, utilized a weighted average per cent (83.18%), arrived at as an approximate mean between the two percentages used by the company's engineer, Greene.

As neither consumers' demand nor load factor data was available in this case, we are of the opinion, from the evidence before us, that the application of the weighted average percent utilized by the city comes closest to producing

a fair and correct allocation of the properties involved, especially since the properties of the two companies are not being valued separately herein but as a unit.

Present Fair Value, or Rate Base.

Neither in statutory law nor in court decisions have we been able to find any definite, fixed rule, basis or formula for the determination of the present fair value of the property of a utility used and useful in serving the public.

While it is true, as is contended for by the company, that, it is the present fair value of the propetry that is to be determined, still, the application of the "reconstruction cost new" method alone, to the exclusion of other recognized methods and factors; would necessitate a dependence upon "that most unsatisfactory evidence, the testimony of expert witnesses employed by the parties."[1]

Ultimately, in all rate cases the rate making body finds that it must approach the question of "fair value" in the light of the holding of the Supreme Court of the United States as set forth in the case of *Smyth* v. *Ames,* 169 U. S. 546; 42 L. Ed. 819, wherein the court said:

> "And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates as prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

The historical cost of the properties, which term necessarily embraces (a) the original cost of construction, (b) the amount expended in permanent improvements, and (c)

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[1] Knoxville v. Knoxville Water Company, 212 U. S., page 1, 53 L. Ed. 371.

a comparison of the present with the original cost of construction, as enumerated in the *Smyth* v. *Ames* case must, therefore, be given its proper place by the rate making body.

In the present case, the company in adducing its evidence before the commission relied solely upon the reconstruction cost new method, contending that, while historical cost may have a limited evidentiary value in rate cases, it has no proper place in the instant case, because the early records of the company were inadequately kept and, therefore, provide no correct basis upon which to compute such cost.

The city, however, takes the position that the reconstruction cost new, as well as the historical cost methods are equally applicable; and adduced testimony at length, which we believe fully bears out its contention, namely, that both should be given due consideration by the Commission.

Elements of Value.

The company's engineer, Greene, in his appraisal of the properties used and useful in serving the City of Laredo as of August 1, 1932, arrives at the following result:

	R. C. N.	R. C. N., Less Depreciation
Rate base	$1,415,787	$1,231,601

The city's engineer, Elrod, obtains the following results:

	R. C. N.	R. C. N., Less Depreciation
Rate base	$1,029,155	$810,698

In addition, the city adduced evidence showing the depreciated historical cost of the properties as of July 31, 1932, to be $709,991.23.

The properties of the company are divided into three groups: (a) Gathering system; (b) transmission system, and (c) distribution system.

Gathering System.

The company includes in its appraisal two gathering systems—one situated in the East Jennings Field and the other situated in the West Jennings Field. Its appraisal gives the total depreciated cost of the two systems as $15,868.

The city contends that the West Jennings gathering system is the only one of the two that may possibly be useful in serving Laredo and it includes such gathering system at a depreciated cost of $10,342; this accounts for the net difference of $5,526 between the company's and the city's allowance for this item.

Viewed in the light of the evidence before us, the inclusion of the East Jennings gathering system in the rate base herein is not justified.

Transmission System.

The company's appraisal includes an allowance of $635,230 (new) and $532,133 as the depreciated cost of its transmission system.

The city on the other hand allows $553,353 (new) and $383,960 as the depreciated cost of the transmission system, thus showing a difference between the two (in cost depreciated) of the sum of $148,173. Of this latter amount $37,010 is accounted for in the omission by the city of the Aguilares-Oilton line and the remainder is the result of the difference in findings of per cent condition.

While the city includes an allowance, exclusive of telephone line, of $124,668 as the depreciated cost of that portion of the transmission lines extending from Pascadito Junction to the Jennings Field, a distance of approximately 26 miles, the record discloses that this line was used on only one day during the twelve months' period ending July 31, 1932, in transporting gas to Laredo; further, the condition of this line is such that it could neither safely nor profitably transport the necessary volume of gas to the city, and that if the company's properties were reproduced, this section of the line would not, in our opinion, be necessary in transporting the supply of natural gas required by the City of Laredo.

Distribution System.

The company's exhibit makes an allowance of $563,994 (new) and $477,141 as depreciated cost, while the city allows $564,754 (new) and $460,199 as depreciated cost of this portion of the properties. The net difference of $16,942 is, with the exception of the small difference in the sum

of $760, attributable to the divergence of views of the engineers as to present per cent condition.

Working Cash.

The city's engineer, Elrod, allowed the company for cash working capital, or working cash, the sum of $11,157, which figure was computed upon the basis of two months' operating expenses less gas purchases. The company's engineer, Greene, computed the amount claimed, $24,223, on the basis of 60 days' operating expenses, plus prepaid accounts, gas purchases and a minimum bank balance. We believe that this item should be computed on the basis of 45 days' operating expenses, plus the cost of purchased gas; although in the recent opinion of the Ohio Public Utilities Commission, in the case of Re: Columbus Gas & Fuel Company, P. U. R. 1933, A. 337, the rate-making body in that case held that the working cash "should be limited to one and a half months rather than two months, and that the cost of gas purchased (from an affiliated company) should be eliminated."

As both the city and the company are in accord as to the sum allowable for Material and Supplies, this item of value is not at issue.

Going Concern Value.

Of all intangibles entering into the rate structure, the item "going concern value" is manifestly the most elusive and consequently has been allowed in varying percentages under the facts of particular cases, and entirely disallowed in others.

That this item is an element of value, upon adequate proof, to be taken into consideration by the rate-making body in arriving at a fair and proper rate base, is generally recognized. However, in the giving of such requisite consideration it is not essential that the item be given a separate designation or description.

This phase of the question was passed upon by the Supreme Court of the United States in its recent decision in the case of *Los Angeles Gas & Electric Corporation* v. *Railroad Commission of the State of California*, — U. S. P.

77, L. Ed. — (not yet officially reported), wherein the Court, speaking through Mr. Chief Justice Hughes, says:

> "The record affords no adequate basis for criticizing the allowance made by the Commission for materials and supplies and working capital, and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern. The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element."

The Company contends for an allowance of going concern value as follows:

(a) In connection with its gathering system, the sum of $3,122;

(b) In connection with its transmission system, the sum of $70,659; and

(c) In connection with its distribution system, the sum of $81,301; or, a total of $155,082.

The City on the other hand makes no separate allowance for this element of value in its appraisal, contending that its value was capitalized by the Company when it specifically included this item in its purchase cost of the original properties in the year 1910, and was so treated by the Company; further, that the elements entering into its value had been charged to operating expenses by the Company, and that any additional or remaining portion had been fully considered and allowed by it in the manner in which its engineers evaluated the property.

Accrued Depreciation.

(Per Cent Condition).

The amount of accrued depreciation is, or the per cent condition of the properties under consideration, was testified to at length by Engineers Elrod and Shaw for the City and by Engineers Greene and McGary for the Company.

The Company contends that the inspection—or observation—method is the only method to be employed in determining the accrued depreciation or the per cent condition of its properties; and its engineers, in determining the present per cent condition relied solely upon what is known as the inspection method.

On the other hand, the City takes the position that, while the inspection method is of value in determining the amount of accrued depreciation such method cannot be singled out to the exclusion of all other recognized methods; and its engineers employed the inspection method, in combination with what is known as the age-life method of determining the present per cent condition of the properties.

A considerable portion of the distribution system of the Company's properties lies under pavement; all of the engineers testified that due to the impracticability of disturbing the pavements of the City's thoroughfares, no actual physical inspections were made of the structures under pavement. It is evident then, that the determination of the per cent condition of the property lying under pavement, as made by the Company's engineers, was pure speculation, while on the other hand, the determination of the per cent condition of such property by the City's engineers was, to say the least, based upon a reasonable assumption—that of the age and probable life of such elements.

The largest single item of accrued Depreciation, as determined by the City's engineers, was in connection with the Pescadito-Jennings transmission line, laid 16 years prior to the date of the hearing. It was developed that this 6 inch steel line had not been adequately protected with enamel, or other coating, and that the line lay through a territory in which there were many "hot spots", or areas of soil of a highly corrosive nature, and that in these areas, the pipe was practically of zero value. The dollar difference in this one item alone, in the amounts of depreciation deducted by the Engineers for the Company and for the City is $53,289. If this difference were eliminated, the respective per cent conditions would be:

Company	84.1%
City	80.5%
Difference	3.6%

Engineer McGary's testimony disclosed that he had encountered only one of the many "hot spots" along this line; nor was Engineer McGary concerned about how many such "hot spots" there might be. While his methods of determining per cent condition may be used in highly technical laboratory work, we are of the opinion that if they form the sole basis of the calculations made, they are very impracticable, in the field.

Engineers Elrod and Shaw testified as to the condition of the Pescadito-Jennings transmission line and concomitant structures from actual inspection, coupled with the consideration of the age of the pipe, the character of its protective coating, and the character of the soil in which it was laid.

After viewing the testimony of the respective Engineers, the methods employed by each, and the conditions encountered, we find that the over-all per cent condition of the properties is 78%.

Annual Allowance for Future Depreciation.

The estimation of the annual rate of depreciation is of importance; however, a consideration of what rates have been allowed in other cases, while enlightening, is not of great value here, as each case is in some measure different from each other case, and depends upon the facts of the particular case. Since there is no established rule or formula upon which to proceed with certainty in the matter, we believe that the past experience of the company itself, affords a criterion that merits our consideration.

The only evidence in the record of the past experience of the Company with respect to its actual requirements for retirements is provided by the City's Exhibit E. Here it is shown that, had an annual sum of equal to 2 per cent of the cost of the companies' properties been set aside consistently it would have exceeded the actual requirements for retirements ($252,025) by the sum of $5,557. Also, that had such annual sum been accumulated at the rate of 5%, there would have been a surplus, over and above actual requirements, of $391,933.

While it is true that rate payers, although having contributed to a depreciation reserve far in excess of the utility's actual requirements, may not have such excess accumulation made applicable to future rates, nevertheless, the depreciation reserve so reflected by the Company's books and records may well be utilized by the Commission as a guide in determining the rate of depreciation sufficient to meet future needs.

The Supreme Court of the United States in the case of Smith v. Illinois Bell Telephone Company, 282 U. S. 133, 75 L. Ed. 255, speaking through Mr. Chief Justice Hughes, says:

> "While it has been held by this court that property paid for out of moneys received for past services belongs to the Company, and that the property represented by the credit balance in the reserve for depreciation cannot be used to support the imposition of a confiscatory rate (Public Utility Comrs. v. New York Teleph. Co., 271 U. S. 23, 70 L. Ed. 808; P. U. R. 1926, C. 740, 46 Sup. Ct. Rep. 363), it is evident that past experience is an indication of the company's requirements for the future. The recognition of the ownership of the property represented by the reserve does not make it necessary to allow similar accumulations to go on if experience shows that these are excessive."

Engineer Elrod, for the City, expressed the opinion that an allowance of 2 per cent per annum represents a sufficient sum for future annual depreciation for the Company.

Engineer Greene, for the Company, testified that the Company should be allowed depreciation at the rate of 5 per cent on the distribution system, 6 per cent on the transmission system, and 10 per cent on the gathering system.

It is obvious that the rates of depreciation on property units installed within the past few years, and on those units to be installed in the future, need not be as large as the rates that were applicable previously due to the fact that more permanent and improved materials and appliances have been, and are being, and will be used, than was the case in the past. For instance, the greater portion of all pipe lines, involved here, laid prior to 1916, was not protected with

covering. Of recent years, no unprotected pipe line has been laid, nor is it probable that any such pipe will ever be laid again. Scientific discoveries and improved materials and better knowledge of methods are continually reducing the cost of depreciation.

In view of the conflicting testimony as to the physical condition of certain portions of the properties, we are of the opinion that a rate of depreciation of 2 per cent may be too low for application in this particular case. On the other hand, we believe that the rates of five, six and ten per cent, respectively, as asked for by the Company are far in excess of its future needs. Therefore, in the light of the record before us, we are fixing the annual depreciation rate at 3 per cent which we consider ample to meet the Company's future requirements.

General Overheads.

The allowances claimed for general overheads by the Company, and by the City respectively, are as follows:

	Company.	City..
Preliminary and Organization	$ 35,505	$ 18,371
Engineering and Superintendence	50,124	17,408
Administration and Legal	33,831	10,445
Taxes during Construction	6,257	4,593
Interest during Construction	48,581	24,371
Total	$ 174,298	$ 75,188

Claims for these items are based on assumptions and calculations of both the Company's and City's engineers. The amount contended for by the Company is approximately 19.96 per cent of its appraised value of the physical properties, while the amount set up by the City is 10 per cent of the City's total, as reflected in its appraisal of the physical properties.

Available Revenue.

The Company presented a "set up" (Ex. 4) of operating revenues and expenses for the 12 months' period ending

July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar "set up" (Ex. L) covering the years ending June 30, 1929, 1930, and 1931, and for the year ending July 31, 1932—a period of four years; it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken, alone, as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken as the test period, nor should an average of these two years be taken.

Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the 3 years 1930, 1931, and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year 1930.

Therefore, in the light of ample lawful precedent for the taking of an average of four successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932 constitutes the test period for the computation of the rate structure upon which a fair return is to be predicated.

The number of consumers of natural gas in the City of Laredo, and the volume of gas consumed is reflected in the Company's sworn reports on file with the Commission for the years 1929, 1930, 1931 and 1932.

The Company contends for an allowance of 1 cent per M. C. F. of gas purchased in the Carolina-Texas Field, as a gathering charge. The gathering lines in this field are not the property of the Company, but are the property of the Southern Gas Company, an affiliate. The basis of the Company's contention for the 1 cent gathering charge is a contract (Ex. 10) between it and its affiliate company, which contract stipulates a charge of 1 cent per M. C. F. for the use of its gathering lines and facilities.

The Company witness Abernathy, its Superintendent of Transportation, testified that the reasonable cost of constructing this gathering line and facilities would be approximately $25,000. On the basis of the volume of gas purchased for Laredo (as per 4-year average = 730,404 M. C. F.) assuming that all gas purchased comes from the Carolina-Texas Field (although, included in the City's Rate Base is a sum of $10,342 for the present value of a gathering system in the West Jennings Field), this gathering charge would amount to $7,304 per annum. As a comparison, a fair return on the cost new of this Carolina-Texas gathering system (based on 7% return 3% depreciation, plus an approximate 10% operating charge) is 20%, or $5,000. Of this total, however, only approximately $4,000 would be allocable to Laredo; obviously, the fair return on the present depreciated value of the existing gathering system would be considerably less. In the light of the evidence herein, we are of the opinion that if the 1 cent gathering charge contract had been made at "arms length", and not by two affiliated companies, a reasonable gathering charge would very probably have been set at ¼ of one cent per M. C. F. rather than at 1 cent. In view of the circumstances in connection with this particular transaction, we are of the opinion that a gathering charge of ½ of 1 cent per M. C. F. of gas purchased from the Carolina-Texas Field is a fair charge allowable in connection with the computation of the rate structure herein.

The Company includes in its operating statement a charge designated "pipe line rental" covering an alleged expense incurred by the Company to an affiliate for the use of a section of gas transmission line situated in the East Jen-

nings Field. The City takes the position that this item is not properly chargeable to the Laredo rate payers as it is not being used to transport gas to Laredo, nor is it necessary to such transportation. The record, in our opinion, does not justify the inclusion of this item as chargeable against the rate payers in the City of Laredo.

The Company also contends for the allowance as proper operating expense of certain amounts claimed for management fees, loss on bad debts, advertising, general office expense (prorated between interconnected companies), special payrolls of the United Gas Company (the parent company), general expense (prorated with Southern Gas Company, an affiliate company), maintenance of general structure, testing mains for leaks, Laredo Rate Case expense, and Donations.

It is the contention of the City, on the other hand, that such allowance in favor of the Company as an operating charge is not properly supported under the facts and circumstances in this case, and the City asks for its elimination in the computation of the fair rate of return.

From the facts reflected by the record before us, we find that the Company has not shown itself entitled to the allowances which it asks the Commission to make in this regard. However, we feel that reasonable compensation should be allowed the Company in connection with loss on bad debts, general office expense, advertising, maintenance of general structures, donations, testing mains for leaks, and the Laredo Rate Case expense (amortized over a period of ten years), and we have made allowance for all such, in arriving at a just and fair rate of return in this case.

In arriving at a decision and making an order herein that is deemed by the Commission to be just and reasonable, we have carefully and fully considered all the evidence presented and all the facts and circumstances reflected by the record herein; and upon giving due consideration to all the elements of value inhering in the property involved in this proceeding, have valued the company's properties as an operating concern, with business attached; have made ample allowance for materials and supplies, working cash, and general overheads; and have included in such

value the Pescadito-Jennings Transmission Line and the West Jennings Gathering System (although the record clearly discloses that these last two named property items are neither being used, nor are they necessary as standby equipment), and we find the present fair value of the properties of the company used, and useful in the gathering, transporting and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000.

The said total present value of the properties thus found by us exceeds substantially the original or historical cost thereof, as shown by the record in this case.

In view of the facts and circumstances hereinabove enumerated and because of the valuation of the properties as herein stated, we find that no additional and separate allowance for going concern value is justified in this case, and no such additional and separate item is allowed.

We find that an annual rate of return equal to seven per cent (7%) of the present fair value of the properties as herein found is adequate.

We find that the following schedule of rates is just and reasonable herein, and that its application will produce a net return in excess of seven per cent (7%) per annum on the present fair value of the properties, after provision for operations and reserve for depreciation.

Rate Schedule.

On natural gas for all domestic uses, 55 cents, net, per M. C. F.

Minimum bill per user per month, $1.00.

Penalty for non-payment within 10 days from the date of rendition of bill, 10% of the amount thereof.

The proper order will be issued putting into effect the above findings.

Order.

In the above numbered and entitled cause, the Commission having heard the evidence presented by all parties at interest pertaining to the matters and things therein involved, and having now carefully and duly considered the same, and having filed in this case its opinion in writing

getting forth its conclusions and findings, which said opinion is hereby made a part of this order, it is

Ordered, Adjudged and Decreed by the Railroad Commission of Texas, that the rates to be charged to the consumers of Natural Gas within the City of Laredo, Texas, from and after the 1st day of January, A. D. 1932, shall be as follows:

For natural gas for domestic use, 55 cents net per M. C. F.
Minimum bill per user per month, $1.00.
Penalty for non-payment of bills within 10 days from date of rendition, 10% of the amount thereof.

It is further Ordered by the Railroad Commission of Texas that no fixed charge be set for the sale of natural gas to non-domestic consumers in the City of Laredo.

It is further Ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the city of Laredo for the benefit of the domestic gas consumers the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order.

It is further Ordered, Adjudged and Decreed by the Railroad Commission of Texas that the application of the Texas Border Gas Company filed herein on the 16th day of September, 1932 (Gas Utility Docket No. 63), for an increase in the rates to be charged to domestic consumers of natural gas within the City of Laredo, Texas, be, and the same is hereby denied.

Dated at Austin, Texas this the 13th day of June, A. D., 1933.

RAILROAD COMMISSION OF TEXAS,
By (Signed) LON A. SMITH,
Chairman,
(Signed) C. V. TERRELL,
(Signed) ERNEST O. THOMPSON,
Commissioners.

Attest:
C. F. PETET,
Secretary.
(SEAL.)

(8844-C)

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant,

v.

STATE OF TEXAS ET AL., *Appellees.*

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

APPELLANT'S BRIEF OPPOSING APPELLEES' MOTION TO DISMISS

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant,
United Gas Public Service Company.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 807

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant,

v.

STATE OF TEXAS ET AL., *Appellees.*

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

APPELLANT'S BRIEF OPPOSING APPELLEES' MOTION TO DISMISS

To the Honorable Supreme Court of the United States:

April 12, 1937, appellant, United Gas Public Service Company, received by mail notice of appellees' intention to file, pursuant to Rule 7, paragraph 3 (U. S. Sup.),[1] motion to dismiss this appeal, together with a printed undated copy of the motion.

Appellant files this brief opposing appellees' motion pursuant to paragraph 3 of the above Rule.

[1]Three sets of court rules will be referred to in this brief. The Rules of the Supreme Court of the United States will be identified by the abbreviation (U. S. Sup.), the rules of the Supreme Court of Texas by the abbreviation (Tex. Sup.), and the rules prescribed by the Supreme Court of Texas for the Courts of Civil Appeals of Texas by the abbreviation (Tex. CCA).

Matters Not In Dispute.

As appellees assert, this is an appeal from a judgment of the Court of Civil Appeals, Third District, Texas. The record, filed in this Court March 12, 1937, affirmatively shows that the appeal was taken after all means of possible further appellate review in the state courts had been exhausted, appellant's application for writ of error having been refused and motion for rehearing thereof having been denied by the highest state court, the Supreme Court of Texas. On December 30, 1936, the date the State Supreme Court overruled said motion for rehearing, the record was returned to the Court of Civil Appeals. The judgment of the Court of Civil Appeals then became final in the courts of the State, and thereupon the Court of Civil Appeals was empowered to issue mandate immediately.

Appellant duly sought allowance of this appeal and an order superseding the judgment from the Chief Justice of the Court of Civil Appeals. He declined to allow the appeal. The appeal was allowed (January 16, 1937), and, after notice to appellees, an injunction restraining enforcement of the rate and refund order was granted (January 21, 1937) by Mr. Justice Cardozo. Service was completed under Rule 12, paragraph 2 (U. S. Sup.) on January 19, 1937. Appellees filed no statement or motion pursuant to paragraph 3 of said Rule. The Court noted probable jurisdiction April 5, 1937. The only part of the record which has been printed and distributed to counsel is appellant's jurisdictional statement.[2]

[2]The record references in this brief are to the typed transcript of record, comprising 1104 pages, finally certified by R. E. Moore, Clerk of the Court of Civil Appeals, on March 5, 1937.

Summary Statement of the Authority Upon Which the Appeal Was Taken.

This appeal was not taken from the Supreme Court of Texas, which, in the exercise of a discretionary right to do so, had refused to grant writ of error and to review the judgment of the Court of Civil Appeals, but was taken from the Court of Civil Appeals after the judgment of that Court was no longer susceptible of further appellate review in the state courts, and at a time when the mandate of said intermediate appellate court was ripe for issuance, because (1) Such has been the established practice in Texas for more than forty years, as reflected by a long line of decisions of this Court.[3] (2) The record made by the Supreme Court of

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[3]The following decisions of this Court were upon error to or appeal from one of the Courts of Civil Appeals of Texas (which courts were created in 1892), after the Supreme Court of Texas had: (1) refused application for writ of error, Stanley v. Schwalby (1896) 162 U. S. 255; Bacon v. Texas (1896) 163 U. S. 207; Waters-Pierce Oil Co. v. Texas (1900) 177 U. S. 28; National Cotton Oil Co. v. Texas (1905) 197 U. S. 115; Waters-Pierce Oil Co. v. Texas (No. 1) (1909) 212 U. S. 86; T. & N. O. R. R. Co. v. Sabine Tram Co. (1913) 227 U. S. 111; St. L. & San Francisco Ry. v. Seale (1913) 229 U. S. 156; San Antonio Ry. v. Wagner (1916) 241 U. S. 476; Missouri Kans. & Tex. Ry. Co. v. Texas (1918) 245 U. S. 484; Internat'l & G. N. Ry. Co. v. Anderson Co. (1918) 246 U. S. 424; Zucht v. King (1922) 260 U. S. 174 (subsequently dismissed for lack of a substantial federal question); Barwise v. Sheppard (1936) 299 U. S. 33; (2) dismissed application for writ of error (No search made for cases where application was dismissed because not presented as required by state law), Sullivan v. Texas (1908) 207 U. S. 416; Bain Peanut Co. v. Pinson (1931) 282 U. S. 499.

Since December 11, 1918 (Gammel Statesman Pub. Co. v. Ben C. Jones & Co., decided Dec. 11, 1918, see appellees' motion, pp. 6-7), review by this Court of a judgment of a Texas Court of Appeals has been sought in at least 93 cases (248-298 U. S.). In 64 of these review was sought by petition for writ of certiorari, 54 petitions being dismissed or denied and 10 being granted, including the following: So. Pac. Co. v. Berkshire, etc. (1919) 250 U. S. 638; Western Union Teleg. Co. v. Southwick (1920) 251

Texas in refusing writ of error to the Court of Civil Appeals will not support an appeal to this Court, as it does not appear from the face of such record that the refusal to grant writ of error was an exercise by the State Supreme Court of its jurisdiction to review the case on its merits, a showing of affirmance in express terms of the judgment of the Court of Civil Appeals being entirely lacking.[4] (3) Viewed purely as a question of state law, when writ of error to a Texas Court of Civil Appeals is refused by the Supreme Court of Texas in a case which the latter court has the discretionary right to review, the power exercised is the power to limit the jurisdiction of the highest state court. The judgment of the Court of Civil Appeals then becomes final in the Texas courts because the State Supreme Court has declined jurisdiction and the State of Texas has provided no further appellate review. The jurisdiction of the Supreme Court of Texas to decide the case and enter its judgment therein never attached.[5] (4) In this case,

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[3] (*Continued*)
U. S. 549; City Nat. Bk. v. El Paso & Northeastern R. R. Co. et al (1922) 258 U. S. 616; M-K-T R. R. Co. of Texas v. State (1928) 271 U. S. 653; M-K-T R. R. Co. v. King (1926) 273 U. S. 680; Danciger & Emerich Oil Co. v. Smith (1927) 274 U. S. 733; Texas & Pac. R. Co. v. Guidry (1929) 280 U. S. 538. No refusal or dismissal was noted upon the ground that certiorari should have been to the Supreme Court of Texas.

[4] Norfolk Turnpike Co. v. Virginia (1912) 225 U. S. 264, 269; Louisiana Nav. Co. v. Oyster Commission (1912) 226 U. S. 99, 101; St. L. & San Francisco Ry. v. Seale (1913), 229 U. S. 156, 157; Royster Guano Co. v. Virginia (1920) 253 U. S. 412, 413; Western Union v. Priester (1928) 276 U. S. 252, 258; Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States, sec. 48, pp. 83-85.

[5] Art. V, sec. 2, Constitution of Texas; San Antonio & A. P. Ry. v. Blair (1917) 108 Tex. 434; 437-441; Gatz v. City of Kerrville (1931) 121 Tex. 92, 93; Articles 1739, 1750, 1766-1767,

the Court of Civil Appeals was possessed of the record from the day the Supreme Court of Texas finally declined to take jurisdiction. The judgment of the Court of Civil Appeals, not being susceptible of further state appellate review, was final in the courts of Texas, and was ready for immediate enforcement by mandate, which mandate only the Court of Civil Appeals had power to issue. Injunction pending this appeal was essential to protect appellant's rights. The mandate of the Court of Civil Appeals to enforce its judgment was the means by which appellees could impair those rights, unless restrained. (See last footnote above).

One Question Asserted by Appellees' Motion.

The only question sought to be raised by appellees' motion is that, viewed purely as a question of state law, the refusal of the writ of error to the Court of Civil Appeals constituted a judgment of the Supreme Court of Texas affirming without opinion the judgment of the Court of Civil Appeals. Appellees completely ignore and make no showing in respect of what appears upon the face of the record. They ask this court to go behind the record, resort to and adopt their construction of the state law, and upon doing so, to dismiss the appeal. As we view it, this is the sole ground of the motion. We submit that appellees have not presented a tenable ground for dismissing this appeal.

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[3] (*Continued*)
1771, 1773, 1777, 1780, 1800a, sec. 5, 1864, 1867, 1881, 1883, Revised Civil Statutes of Texas, 1925; Rules 2-8, 13, 19, Supreme Court of Texas, 121 Texas 747-752; Rule 66, Courts of Civil Appeals, Texas, 102 Tex. xxxvi.

Appellees Present No Tenable Ground for Dismissal.

In *Norfolk Turnpike Co. v. Virginia* (1912), 225 U. S. 264, 269, the Court declared the rule to be applied thereafter when the highest state court had declined, by refusal of writ of error or appeal, to review the judgment of a lower court. This rule was announced for the guidance of suitors, to be applied from and after the next (October 1912) term of this court. The rule is that where a writ of error (now appeal) is prosecuted to this Court from an alleged judgment or decree of the highest state court declining writ of error to or appeal from the judgment of a court below, this Court will dismiss the appeal, unless it plainly appears, on the face of the record, by an affirmance in express terms of the judgment below, that the refusal by the highest state court was an exercise by it of jurisdiction to review the case upon the merits (225 U. S. at p. 269).

The opinion in the *Norfolk Turnpike case, supra* is by Mr. Chief Justice White, and may be read in connection with his opinion in *Louisiana Nav. Co. v. Oyster Commission* (1912), 226 U. S. 99, 101. Chief Justice White then had before him a record from the Supreme Court of Louisiana, his own State. On the face of the record, the judgment of the state court was not final. It was contended that if this Court would look behind the face of the record and resort to the state law, it would then appear that the judgment, though not final in form, was final in its result, because it practically disposed of the rights of the parties. The Court dismissed the writ, holding that the form of the judgment as shown by the face of the record was controlling. The court said that the confusion and contradiction inevitably arising when

the Court is required to look beyond the face of the record and to resort to the state law, was the dominating reason for the principle that the form of a judgment controls in determining its finality. The citation of the Norfolk Turnpike case (at 226 U. S. 101) affirms the purpose of the Court to provide a definite test for suitors so as to dispel future doubt as to what constitutes the state judgment appealable under the federal statute (225 U. S. at p. 269).

For many years before the Norfolk Turnpike case, this Court had held that when the Supreme Court of Texas denied writ of error, it thereby prevented a review by it of the judgment of the Court of Civil Appeals, and hence the review in this Court was on error to the Court of Civil Appeals which had rendered the judgment, and not to the highest state court which had refused to review that judgment, *Stanley v. Schwalby* (1896), 162 U. S. 255, 269; *Bacon v. Texas* (1896), 163 U. S. 207, 215, 216. See also *Waters-Pierce Oil Company v. Texas* (1900), 177 U. S. 28, 41; *National Cotton Oil Co. v. Texas* (1905), 197 U. S. 115, 118; *Waters-Pierce Oil Co. v. Texas* (No. 1) (1909), 212 U. S. 86, 97; and *Sullivan v. Texas* (1908), 207 U. S. 416, 422, all upon error to a Texas Court of Civil Appeals after the Supreme Court of Texas had declined writ of error. In *St. L. & San Francisco Ry. v. Seale* (1913), 229 U. S. 156, 157, motion to dismiss error to the Court of Civil Appeals after the Supreme Court of Texas had refused writ of error was denied, citing *Bacon v. Texas* and the *Norfolk Turnpike case, supra.*

The rule of the Norfolk Turnpike case has been followed by the Court, *Royster Guano Co. v. Virginia*

(1920), 253 U. S. 412, 413; *Western Union v. Priester* (1928), 276 U. S. 252, 258, and is accepted by the text writers with apparent approval. See *Robertson and Kirkham, Jurisdiction of the Supreme Court of the U. S.*, section 48, p. 85; *Hughes Federal Practice*, secs. 3189, 3214 and 3216.

Clearly, the Court's intention was to provide its own rule for ascertaining compliance with the federal statute (Title 28, sec. 344, U. S. C.) in respect of the finality of state court judgments. The rule furnishes suitors a standard which they can apply with the definite assurance that dismissal will not result from uncertainties of the state law not exhibited upon the face of the record. The rule being one to minimize the loss of rights and consequent miscarriage of justice which often attend dismissals on account of procedural complexities, we submit that the rule is entitled to a liberal construction and application to effect its purpose.

Appellees' motion is entirely grounded upon the erroneous assumption that what constitutes a final judgment appealable under the federal statute is a question of state law, to be resolved solely by resort to the state decisions, without reference to the face of the record, and after the three months provided by Title 28, sec. 344, U. S. C. have elapsed. If appellees' motion is well grounded, then hereafter prospective appellants in most, if not all of the states, must proceed faced with the prospect of dismissal after expiration of the time to bring the case before this Court. As a result, alternative appeals or petitions for certiorari will be filed in respect of every state judgment in all cases which might be subject to the contention made by these ap-

pellees, thus needlessly increasing the cost to litigants and encumbering the docket of this Court.

We have searched diligently for instances where an appellee has shown or even asserted substantial injury or loss of his rights from the application of the rule in the Norfolk Turnpike case. We have found no such showing or claim. Appellees make none here. Since the Court of Civil Appeals is the only court empowered to issue mandate to enforce this judgment, and is the court possessed of the record, the Court can make effective and binding any judgment which it may enter pursuant to this appeal.

Appellant respectfully prays that the motion be denied, without consideration of the merit of the question of state law sought to be presented thereby, because the motion does not present a tenable ground for dismissal.

If the above prayer is denied, then appellant opposes the motion upon the following grounds:

1. The record clearly and affirmatively shows that the refusal to grant writ of error did not constitute a judgment or decision of the case by the Supreme Court of Texas, and that an appeal to this Court from the Supreme Court of Texas cannot be supported by the record.

2. The question of state law asserted by appellees is so utterly devoid of merit, or at least is so shrouded in doubt, as not to constitute a ground for dismissing this appeal.

Face of the Record.

Appellant's petition for writ of error was addressed to the Supreme Court of Texas (R. 793). Appellant therein—

> "* * * respectfully petitions this Honorable Court to issue its writ of error in this cause directed to the said Court of Civil Appeals to the end that this case may be removed from said Court to this Court, where the record and proceedings herein may be fully reviewed and the judgment of the Court of Civil Appeals rendered herein may be reversed and judgment rendered for this plaintiff in error, or else that the case may be remanded for a new trial; * * *" (R. 794)

This petition for writ of error was duly filed in the Court of Civil Appeals and sent by its Clerk, together with the record in the Court of Civil Appeals and the opinion, judgment, and orders of that Court, to the Clerk of the Supreme Court of Texas, where the writ of error proceeding was docketed as Application No. 21,776 (R. 792). The Supreme Court of Texas recorded its refusal of the application for writ of error in the following order:[6]

> "Order Denying Writ of Error
> Clerk's Office, Supreme Court of Texas
> October 7, 1936.
> United Gas Public Service Co.
> App. No. 21776 v. (From Travis County, Third District)
> The State of Texas, et al.
>
> This day came on to be heard the application of plaintiff in error for a writ of error to the Court

[6]There is some confusion about whether the date of this order was October 6 or October 7, 1936. Only one such order was entered and that order is quoted above.

of Civil Appeals for the Third District and the same having been duly considered, it is ordered that the application be refused; that applicant, United Gas Public Service Company, pay all costs incurred herein.

(No opinion entered)" (R. 819)

The State Supreme Court recorded its overruling of the motion for rehearing of the application for writ of error by the following entry on the motion docket:

"Entry showing overruling of Motion for Rehearing.

IN THE SUPREME COURT OF TEXAS

United Gas Public Service Company
Mo. No. 12899 v. (From Travis County, Third District)
The State of Texas, et al.

December 30, 1936.

For rehearing of App. No. 21776. Overruled.
(No opinion entered)" (R. 828).

The following appears in the certificate of the Clerk of the Supreme Court of Texas:

"I further certify that on the 30th day of December, 1936, the record, statement of facts, briefs, and all other papers in said cause (except the petition for writ of error, the reply thereto, the motion for rehearing and the orders of the Court of Civil Appeals) were by me returned to Hon. R. E. Moore, the Clerk of the Court of Civil Appeals, for the Third Supreme Judicial District." (R. 835.)

See also the docket entry in the Court of Civil Appeals noting return of the record (R. 696).

The order of the Chief Justice of the Court of Civil Appeals declining to allow an appeal to this Court contains the following recital:

> "It appearing that, following this Court's denial of appellant's motion for rehearing on January 8, 1936, said cause has been pending on application for writ of error to the Supreme Court of Texas, which application was denied October 6, 1936, and motion for rehearing thereon overruled December 30, 1936. And it further appearing that the record in said cause has been returned to and is now in the possession of this Court of Civil Appeals and that this Court of Civil Appeals is the proper court to issue mandate herein, but that such mandate has not yet been issued." (R. 838)

See also section 1 of the Stipulation as to Record entered into by counsel for appellant and appellees (R. 1094), and the order of the Chief Justice of the Court of Civil Appeals entered pursuant to such stipulation (R. 1098-1099).

Nothing that was designated by appellees' counter-praecipe for record (R. 1068-1091), or by appellees' counter-designation for printing, is omitted from the record now before this Court.

It is worthy of note that the Clerk of the State Supreme Court did not proceed with the collection of the costs of the writ of error proceeding by presenting bill of costs to appellant, but certified such costs to the Clerk of the Court of Civil Appeals, the Court empowered to issue mandate and process for the collection of costs (R. 1101).

We believe that the above constitutes a complete showing of all parts of the record which have any bearing upon the character of action taken by the Supreme Court of Texas in this case.

The Record Shows Affirmatively and Conclusively That An Appeal from the Supreme Court of Texas Cannot Be Supported.

When the orders of the Supreme Court of Texas, taken by themselves or in conjunction with the remainder of the record, are tested by the rule in *Norfolk Turnpike Co. v. Virginia,* 225 U. S. at page 269, it is plain that the record will not support an appeal to this Court from the Supreme Court of Texas. We concluded before the appeal papers were prepared, and we still believe, that an appeal to this Court from the State Supreme Court would not only have been subject to motion to dismiss or affirm, as an appeal taken solely for delay, but that the docketing of two appeals, one from the Court of Civil Appeals and the other from the State Supreme Court, would have been so entirely lacking in good faith as to come dangerously close to an abuse of the Court's process. In view of the rule which the Court had provided to guide us, in view of the record and the established practice for over forty years, we could not have asserted doubt sufficiently substantial to justify an alternative appeal, although it would have saved the question appellees present now.

The Question of State Law Asserted by Appellees Is Either Wholly Devoid of Merit, or Too Doubtful to Support Their Motion.

Appellees rely on one case, *Gammel Statesman Pub. Co. v. Ben C. Jones & Co.*, 206 S. W. 931 (not officially reported). They assert that this is the only and the controlling decision in the State upon the legal effect

of refusal of a writ of error to a Court of Civil Appeals in a case where the State Supreme Court has the power of discretionary review.

Article V, sec. 2 of the Constitution of Texas begins:

> "The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to the decision of a case."

The remainder of this section relates to qualifications for office, salary, term of office and filling of vacancies, etc.

The Forty-First Texas Legislature enacted a statute authorizing the State Supreme Court to appoint a commission consisting of six commissioners, to assist the Supreme Court to dispose of its docket (Acts 1930, 41st Leg., 5th Called Session, Chap. 2, p. 112). This statute is now Article 1800a of the Revised Civil Statutes of Texas, 1925. Sec. 5 of the Article provides:

> "Two of said Commissioners designated by the Supreme Court acting with one member of the Supreme Court shall be authorized to pass upon all applications for writs of error presented from the Courts of Civil Appeals, and the action of said two Commissioners and one member of the Supreme Court in passing upon such applications shall be given the same force and effect as if the same were passed upon by the Supreme Court; provided, upon any application in which the three judges are not unanimous, the same shall be determined by the Supreme Court."

In *Gatz v. City of Kerrville* (1931), 121 Tex. 92, said Sec. 5 was attacked as being repugnant to Article V,

sec. 2 of the State Constitution, because it purported to authorize refusal of application for writ of error without the concurrence of two members of the Supreme Court. The claim was that the refusal of writ of error to the Court of Civil Appeals had the effect of making the judgment of the intermediate appellate court final in the courts of Texas, and constituted a decision and judgment of the case by the Supreme Court of Texas. The Supreme Court of Texas, per curiam, upheld the statute upon the authority of *San Antonio & A. P. Ry. v. Blair* (1917), 108 Tex. 434, 437-441, declaring the Texas law to be that refusal of application for writ of error is not a decision or judgment of the case by the Supreme Court of Texas, but is merely a refusal by that Court to take jurisdiction. The Court held that the power to limit appellate jurisdiction includes the power to provide means of making the limitation effective, and it is such means, and not the jurisdiction of the Supreme Court of Texas to decide a case (Art. V, sec. 2, Constitution of Texas), which are employed in refusing applications for writ of error.

In the Blair case, decided June 1917, 108 Tex. 434, 437-441, the validity of Chapter 76 of the Acts of 1917, Texas Legislature was upheld. The Act was attacked as repugnant to several sections of Article V, Constitution of Texas. This Act, as originally enacted and as recodified in 1925, is a part of appendix D, pages 38-42, appellees' motion. It was claimed that action in respect of applications for writ of error to the State Supreme Court was an exercise of the jurisdiction of that Court conferred by the State Constitution, which jurisdiction could not be exercised by or delegated through legisla-

tive enactment to Justices of the Courts of Civil Appeals. The Supreme Court of Texas, in an opinion by Chief Justice Phillips, pointed out the difference between the exercise of the Supreme Court's jurisdiction, namely, its power to hear and determine cases, and the performance of an act, pursuant to the power to limit jurisdiction, by which that jurisdiction would either be taken or declined. It was held in the Blair case that the constitutional provisions in respect of state appellate courts related to jurisdiction to decide and enter judgment in cases, and since that jurisdiction was not involved in passing upon applications for writ of error, the statutes in question were not repugnant to the State Constitution, 108 Tex. at pp. 440-441.

The Blair and Gatz cases, directly holding that denial of a writ of error is merely a refusal to take jurisdiction, seem absolutely conclusive to us. They are precisely in keeping with the declaration of the Texas legislature that the refusal or dismissal of an application for a writ of error shall have the effect of denying the admission of the case into the Supreme Court, Article 1750, Revised Civil Statutes of Texas, 1925. Taken with these two decisions, said Article is a legislative recognition of the character of the action taken in passing upon application for writ of error, as declared by the state court of last resort, and not a legislative attempt to make action upon such an application mean one thing when done by members of the Supreme Court, and something entirely different when performed by another designated agency (See appellees' argument, motion, pp. 15-17).

The applicable Texas statutes and court rules cannot

be reconciled with appellees' claim that denial of writ of error is a decision of the case and entry of judgment therein by the State Supreme Court. These statutes and rules are numerous and long and only the more pertinent of them will be summarized. Writ of error in this case, Art. 1728,[7] is not a matter of right, but is to be granted only if good cause be shown, Art. 1739. When petition for writ of error is duly filed in a Court of Civil Appeals, such petition, together with the original record in the Court of Civil Appeals is forwarded to the Clerk of the Supreme Court, Art. 1883. The timely filing of such a petition stays enforcement of the judgment of the Court of Civil Appeals by suspending issuance of mandate pending determination of the application, Art. 1864. The Clerk of the Supreme Court keeps three dockets, an application docket, a trial docket, and a motion docket, Rules 2, 8 and 13 (Tex. Sup.), 121 Tex. 747, 750. Application for writ of error is entered on the application docket and given an application number, which number is different from the number of a case which, by granting of the writ, has been admitted to the Supreme Court and to its trial docket for decision and judgment, Rules 2, 8 (Tex. Sup.), 121 Tex. 747, 750. The application is deemed submitted and ready for disposition after ten days after it is filed, and if the application is refused, the record of the Court of Civil Appeals is retained fifteen days. After fifteen days, if no motion for rehearing is filed, or after motion for rehearing is overruled, its original record is then returned to the Court of Civil Appeals,

[7]The reference to articles is to the Articles of the Revised Civil Statutes of Texas, 1925.

together with certified copies of the orders denying the application and overruling motion for rehearing, Rule 4 (Tex. Sup.), 121 Tex. 748. Then the Clerk of the Court of Civil Appeals is empowered to issue mandate, Art. 1864, Rule 66 (Tex. CCA.), 102 Tex. xxxvi, and, if need be, execution for costs. The time during which application for the writ has been pending is not included in computing the twelve months' time in which mandate is to issue, *Texas Co. v. Clark & Co.* (1922), 112 Tex. 74, 78-79.

Once the Supreme Court, by granting the writ, takes jurisdiction of a case, the procedure is entirely different, and the decision, judgment, mandate and execution for costs are the acts and process of the Supreme Court itself. In all cases decided by the Supreme Court, its judgments or decrees shall be pronounced in open court, Art. 1766. Article 1767 provides:

> "Whenever the Supreme Court shall affirm a judgment or decree of a Court of Civil Appeals, it shall render such judgment or decree as should have been rendered by the Court of Civil Appeals, and shall render judgment against the plaintiff in error and the sureties on his appeal or supersedeas bond, for the performance of said judgment or decree, and shall make such disposition as to the costs as they may order."

Article 1771 states how the Supreme Court shall exert its jurisdiction to decide a case:

> "In each case, the Supreme Court shall either affirm the judgment, or reverse and render such judgment as the Court of Civil Appeals should have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial."

Where final judgment is rendered by the Supreme Court, the Clerk of that court issues mandate and is not authorized to deliver the mandate until he collects all costs both in the Supreme Court and the Court of Civil Appeals, Art. 1773, costs collected for the Court of Civil Appeals being remitted to its Clerk, Art. 1780. Where the judgment is by the Supreme Court, the Clerk of the Supreme Court is authorized to issue execution for the costs in both courts, Art. 1777.

A defendant in error may file a reply to the petition for writ of error. If he expressly waives the right to be heard in open court, the Supreme Court may decide the case on the petition and reply if it concludes that the writ should be granted. However, in such instances the case is put upon the trial docket, given a trial docket number, the Supreme Court pronounces the judgment of the case in open court and enters the same of record as in other cases, Rules 5 and 8 (Tex. Sup.), 121 Tex. 748, 750. If the right to be heard in open court is not waived, even though a reply is filed, then when the application is granted, writ of error actually issues to the Justices of the Court of Civil Appeals, citation is issued and served on the defendant in error, and if the case require a bond, the writ is not issued until the bond is approved and filed, Rule 5 (Tex. Sup.), 121 Tex. 748, 749. When the citation in error is served, the case is then transferred from the application docket to the trial docket and given a trial docket number, Rule 8 (Tex. Sup.), 121 Tex. 750. After the Supreme Court renders final judgment, the record and other papers cannot be taken from the Clerk's office, Rule 19 (Tex. Sup.), 121 Tex. 752.

The granting of writ of error is discretionary in every case. There is no writ as of right where a constitutional question is raised, thus differentiating the Texas procedure from that considered in the cases from Ohio cited by appellees (appellees' motion, pp. 4-5). It follows that when a writ of error is refused, at least one Supreme Court Justice and two Commissioners, or three designated Court of Civil Appeals Justices, have considered the application and the judgment below and have reached the conclusion such judgment and grounds therefor are correct; and when an application is dismissed (other than for failure to comply with essential requirements of procedure), this evidences a like conclusion that a correct judgment has been reached, although wrong grounds may have been stated therefor.[e] However, this does not mean that the Supreme Court of Texas has taken jurisdiction of the case and has exercised that jurisdiction by deciding the case and entering judgment on the merits. A judgment of affirmance by the Supreme Court of Texas, under the above rules and statutes, is pronounced in open court, the Supreme

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[e]This statement probably goes too far in spite of the statute, Art. 1728. As a matter of practice, only the errors assigned in the application are considered, and the application is denied if the assigned errors are believed not to require review. It is only when the application is granted that the whole case is reviewed, and then the assignments of plaintiff in error are considered in connection with any offsetting or compensating errors which the defendant in error has properly reserved, though not passed upon below. Bomar v. West (1894), 87 Tex. 299, 302; Holland v. Nimitz (1922), 111 Tex. 419, 432; Harris County v. Charlton (1922), 112 Tex. 19, 26. Thus, in passing upon the application, the only thing considered is whether the applicant has shown good cause for further appellate review; but when the application is granted, then the whole case as made in the Court of Civil Appeals is before the Supreme Court of Texas for complete review and judgment.

Court itself rendering the judgment that should have been rendered by the Court of Civil Appeals, with the disposition entered upon the trial docket and the judgment duly recorded, only the Clerk of the Supreme Court having power to issue mandate and execution for costs of both the intermediate and highest appellate courts. See Articles 1766, 1767, 1773, 1777, 1780 and Rule 8 (Tex. Sup.), supra. The record of such a case is then the record of and stays in the Supreme Court, Rule 19 (Tex. Sup.), 121 Tex. 751-752.

We understand appellees to contend that this appeal should be from the Supreme Court of Texas because the three Justices of that Court refused the application. The record does not show who acted, there is no requirement that the Justices or Commissioners who acted on the application be shown of record, and as a matter of practice, that fact is not recorded or known. The appellees' argument is beside the point. If refusal of writ of error is not an exercise of the jurisdiction of the Texas Supreme Court to decide the case, but is merely the employment of means provided to limit that jurisdiction (108 Tex. 434, 437-441, 121 Tex. 92, 93), appellees' contention could be true, and it still would not matter. Refusal of writ of error derives its character from the legal effect of what is done, and not from the position of those who do it. Refusal to take jurisdiction still remains a refusal to take jurisdiction, though the refusal is by those Justices who, if jurisdiction had been taken, would have then decided the case.

To make the appealable judgment depend on the ability of a prospective appellant to find out who passed on the application, a fact not of record, would lead to

hopeless confusion and intolerable results. Appellees' offer to move for a "supplemental opinion" of the Supreme Court of Texas (appellees' motion pp. 15-17) is not only confusing, as the Supreme Court of Texas has never entered an opinion in this case (R. 819, 828), but falls within the rule that certificates and communications of that kind are not available to aid a claim of jurisdiction which is not supported by the record, *Henkel v. Cincinnati*, 177 U. S. 170, 171; *Yazoo and Mississippi R'd Co. v. Adams*, 180 U. S. 41, 48; *Consolidated Turnpike Co. v. Norfolk &c Ry. Co.*, 228 U. S. 326, 334-335. The orders of the Supreme Court are not ambiguous or uncertain. Appellees cannot secure a dismissal of this appeal by importing into the record an opinion designed to make those orders the opposite of what they appear to be.[9]

It is well settled that the order of a state court of last resort refusing to entertain jurisdiction does not become an exercise of jurisdiction to decide the case or a judgment of affirmance because it writes an opinion stating that the judgment below is correct or giving the reasons for denying discretionary review. This Court took jurisdiction to review judgments of Texas Courts of Civil Appeals in two cases, *M. K. & T. Ry. Co. v. Texas*, 245 U. S. 484, and *G. H. & S. A. Ry. Co. v. Texas*, 246 U. S. 548, in each of which the Supreme Court of Texas, in refusing application for writ of

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[9]By asserting that such a "supplemental opinion" would not be available to appellees, we do not concede that such opinion could be obtained. Attempt to obtain it would require a motion, with notice to appellant. Such notice would give appellant the right to reply or be heard in opposition. The Supreme Court of Texas has never, within our knowledge, prejudged and given out its decision of the subject matter of a hearing in advance.

error, had written an opinion expressly approving the holding of the Courts of Civil Appeals. See 107 Tex. 540; 544. This is the rule generally. See *Western Union v. Crovo,* 220 U. S. 364, 366; *American Ry. Exp. Co. v. Levee,* 263 U. S. 19, 21; *Virginian Railway Co. v. Mullens,* 271 U. S. 220, 222.

Another pertinent inquiry is how, if the appeal here were from the action of the State Supreme Court refusing writ of error, the Court could make a judgment for appellant effective. If this Court should direct that the so-called judgment of the State Supreme Court be set aside, that would seem to require the State Court to grant application for writ of error. But the statutory time for any such application is now long past, there is no state statute under which the Clerk of the Court of Civil Appeals could be required to notice a second petition for writ of error if filed by appellant, or under which the Clerk of the Court of Civil Appeals could be required to transmit the record a second time to the Clerk of the Supreme Court of Texas. Under the writ of error procedure (now appeal), one of the controlling features in determining the proper state judgment for review has been what state court has possession of the record. See *Atherton v. Fowler,* 91 U. S. 143, 146, 147, *Hodges v. Snyder,* [illegible] U. S. 600, 601; *Radice v. New York,* 264 U. S. 292, 293.

In the *Gammel case,* 206 S. W. 931 (not officially reported), the judgment of the trial court had been affirmed by the Court of Civil Appeals and the Supreme Court of Texas had denied writ of error. The proceedings from that point were most unusual. The losing parties filed, and the Supreme Court of Texas refused,

an application for a mandamus requiring the Court of Civil Appeals to reopen the case. A similar application for mandamus was filed in respect of the trial court, and that application the State Supreme Court also refused. Having failed to obtain mandamus, the losing parties, directly contrary to the state statutes prescribing when motions for rehearing shall be filed and entertained by the Court of Civil Appeals, Art. 1641, Revised Civil Stats. of Texas, 1911, filed a series of such motions. The third motion, styled "supplemental motion for rehearing of motion to vacate judgment," was granted by the Court of Civil Appeals, the judgment of affirmance set aside, and the case remanded for new trial. The parties who had prevailed up to that time brought the case before the Supreme Court of Texas on writ of error. The Court held that the action of the Court of Civil Appeals in setting aside the judgment was void because contrary to the statute, supra. It was claimed that the Supreme Court was without jurisdiction and power to prevent injury from the void action of the Court of Civil Appeals. The language upon which appellees rely was used in response to that contention. Read without reference to the facts that were before the Court, the language gives some apparent support to appellees' contention. For some twenty years, the case has been considered as authority limited to the very rare combination of circumstances with which the Court was dealing, and not as announcing a rule of general application. This is in accord with the subsequent treatment of the case by the bench and bar of the State.[10] The probability that a court has announced a

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[10]In I. & G. N. Ry. Co. v. Anderson Co., judgment of the trial

broad general rule or precedent diminishes in direct proportion to the novelty of the situation which caused the controversy.

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[10] (*Continued*)

court was affirmed by the Court of Civil Appeals, 174 S. W. 305 (not officially reported), application for writ of error denied by the Supreme Court of Texas, and on error to the Court of Civil Appeals the judgment was affirmed by this Court, 246 U. S. 424. In City of Palestine v. City of Houston (1924), 262 S. W. 215 (not officially reported), the Court of Civil Appeals considered an application for writ of prohibition to restrain a subsequent suit upon the ground that, by seeking to relitigate a part of the subject matter of the former judgment, there was necessary interference with the enforcement of that former judgment, which had then become final. The question arose as to which appellate court of the State, the Court of Civil Appeals which had entered the judgment, or the Supreme Court of Texas which had refused application for writ of error, had jurisdiction and plenary power over the prior judgment so as to restrain interference with its enforcement. The Court of Civil Appeals held (262 S. W. 220) that its jurisdiction over the case was not lost, but its power to enforce the judgment merely suspended, during the pendency of the application of the writ of error, and that refusal of the application not only left its jurisdiction unimpaired, but gave the judgment an additional attribute of finality. The Court held that it, not the Supreme Court of Texas, had jurisdiction to enforce the judgment and to employ the means necessary thereto, including writ of prohibition.

The Supreme Court of Texas dismissed application for writ of error upon the ground that issuance of writs of prohibition by Courts of Civil Appeals to enforce their judgments was a matter in respect of which the jurisdiction of those Courts was final and not subject to discretionary review, City of Houston v. City of Palestine (1924), 114 Tex. 306, 313-314. Within the last few weeks the Supreme Court of Texas entered an order dismissing application for writ of error in Application No. 22410, Joe Edgar, plaintiff in error v. Stanolind Oil Company, et al, defendants in error, with the following endorsement: "Dismissed, because we are without jurisdiction, City of Palestine v. Houston, 262 S. W. 215."

The controversy in the Edgar case originally arose over an order of the Railroad Commission of Texas granting Edgar a permit to drill an oil well on a very small tract. The judgment of the lower court holding the order invalid was affirmed by the Court of Civil Appeals (90 S. W. (2d), 656) and the Texas Supreme Court refused application for writ of error. Thereafter,

Conclusion.

We submit that this motion, not being based on the record, does not present a tenable ground of dismissal. Examination of the record shows affirmatively and conclusively that the record would support no other appeal than the one we have taken. Appellees cannot secure a dismissal at this stage by importing into the case so-called supplemental opinions, or doubtful questions of state law. The question of state law which appellees seek to raise is so lacking in merit, and so far short of that clear and convincing showing required to overturn a practice that has been followed and upheld for forty years, that appellees ought not to prevail.

Appellant respectfully prays that the motion to dismiss be denied.

Dated: 24th day of April, 1937.

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant,
United Gas Public Service Company.

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[10] (*Continued*)
the prevailing parties sought from the Court of Civil Appeals a writ of prohibition and injunction against Edgar and the members of the Railroad Commission on the ground that a second permit issued by the Railroad Commission to Edgar authorizing drilling of the tract now interfered with the enforcement of the judgment. Writ of prohibition was denied, upon the ground that the Commission's second order was void (98 S. W. (2d), 222). Edgar's petition for writ of error relied largely on the Gammel case to support the claim that the Court of Civil Appeals could not enlarge or amend its judgment after writ of error was refused, as this would deny the Supreme Court the power to control its judgment. As above shown, the petition was dismissed on the authority of the City of Palestine case, supra. (These proceedings are readily available to appellees, as the members of the Railroad Commission are appellees here and were parties in the Edgar case).

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant,

v.

STATE OF TEXAS ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF OF APPELLANT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant,

v.

STATE OF TEXAS ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

BRIEF OF APPELLANT

OPINION BELOW

There is only one opinion in this case by the State courts, and that is not officially reported.[1]

[1]The opinion is by the Court of Civil Appeals for the Third Supreme Judicial District of Texas (R. 410), and is unofficially reported 89 S. W. (2d) 1094. No opinion was entered by the trial court. Appellant's motion for rehearing (R. 429) was overruled by the Court of Civil Appeals without opinion (R. 458). The Supreme Court of Texas wrote no opinion when it refused to take the case on writ of error (R. 474, 479). The opinion of the Railroad Commission of Texas (R. 9) is not officially reported, but is to be found in 2 P. U. R. (N. S.) 503.

JURISDICTION

Jurisdiction is asserted under 237 of the Judicial Code, amended; 28 U. S. C. 344 (a). There has been compliance with paragraph 1 of Rule 12 of this Court, as amended March 2, 1936. 297 U. S. 733, 734. An order noting probable jurisdiction was entered April 5, 1937. Appellees' motion to dismiss the appeal was denied May 17, 1937. No. 807, October Term, 1936.

STATEMENT OF THE CASE

Appellant seeks judgment (a) holding confiscatory the order of the Railroad Commission of Texas which reduced the prevailing rate schedule for natural gas for domestic use in the City of Laredo, Texas, and (b) reversing the judgment of the Court of Civil Appeals which upheld the validity of that order and enforced it against appellant by permanent injunction. The questions presented by the appeal are (1) whether the Commission's order is confiscatory, (2) whether federal rights essential for the determination of that issue have been denied to appellant, and (3) whether the State procedure for fixing and for deciding the federal constitutional validity of appellant's gas rates in Laredo, as construed and applied in this case, has been so inadequate and unfair as to deny appellant due process of law and the equal protection of the laws. Section 1, Fourteenth Amendment, Constitution of the United States.

Proceedings Before The Railroad Commission.

The order claimed to be confiscatory was entered by

the Railroad Commission of Texas on June 13, 1933, and decided two appeals taken by appellant[2] under Article 6058, Revised Civil Statutes of Texas, 1925. Appendix 82. The first appeal was from an ordinance of the City of Laredo (R. 7) which reduced domestic rates in Laredo from 75 cents per 1000 cubic feet of natural gas, 10 per cent discount for payment in 10 days, minimum monthly bill $1.00 (R. 10), to 40 cents per 1000 cubic feet[3] (R. 8). This reduction was to become effective January 1, 1932 (R. 9). The appeal was perfected by that date, and the 40 cent ordinance was suspended by the Commission until the appeal was decided (R. 10). The Commission continued the 75 cent rate in effect, appellant giving bond conditioned that it would refund charges in excess of the schedule of domestic gas rates finally determined to be reasonable (R. 411). Appellant's second appeal to the Railroad Commission was from the refusal of the City of Laredo to increase the 75-cent rate (R. 10-11). See Art. 6058, *supra*.

The two appeals were heard by the Commission on one record (R. 9, 11), and were decided by one order dated June 13, 1933 (R. 26). The Commission set aside the 40 cent rate ordinance as unreasonable (R. 427), and denied appellant an increase in the 75 cent rate

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[2]The term appellant is used to designate United Gas Public Service Company and its immediate predecessors in title to the properties involved, namely, Texas Border Gas Company and South Texas Gas Company (R. 10-12).

[3]The minimum monthly bill ($1.00) and the discount for prompt payment (10 per cent) were not changed (R. 8). The ordinance fixed other rates (R. 9) which are not involved, as the Commission set aside these other rates (R. 26).

(R. 26). The Commission fixed the domestic gas rate in Laredo at 55 cents per 1000 cubic feet, 10 per cent penalty for non-payment of monthly bills in 10 days, minimum monthly bill $1.00 (R. 26). The new 55 cent rate was made retroactive to January 1, 1932 (R. 26), appellant being directed to refund such part of its collections after that date as were in excess of what such collections would have been if the 55 cent rate, instead of the 75 cent rate, had been charged from January 1, 1932 (R. 26). An opinion containing the conclusions and findings upon which the order was made constituted part of the order (R. 9-25).

Basic findings of the Commission: The Commission found that (1) "the present fair value of the properties • • • used, and useful in the gathering, transporting, and distributing • • • natural gas within the City of Laredo, Texas," was $885,000 (R. 25), (2) the reasonable annual rates of return and depreciation reserve accrual were 7 per cent (R. 25) and 3 per cent (R. 21) of $885,000 and (3) an average of the revenues and expenses for four fiscal years (July, 1928-July, 1932) constituted "the test period for the computation of the rate structure upon which a fair return is to be predicated" (R. 22-23).*

The Commission did not find that the 75 cent rate was unreasonable (R. 9-25), nor did it find that appel-

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*The hearing before the Commission ended November 14, 1932 (R. 9), the accounting testimony was brought down to July 31, 1932 (R. 201, 218), and the property appraisals were at replacement values (R. 197) as of July 31 and August 1, 1932 (R. 197, 200A, 203-208, 215).

lant's rate of return from January 1, 1932, had been excessive.

Court Proceedings.

TRIAL COURT.

This suit by the State of Texas, its Governor and Attorney General, its Railroad Commisioners, the City of Laredo and its officials, was filed against appellant in the State district court on July 26, 1933 (R. 1). The same day, appellees obtained from that court an order suspending enforcement of the Commission's rate order until final judgment (R. 26-28). This procedure was adopted so as to stay further proceedings in the federal suit in equity which appellant had already filed to enjoin enforcement of the Commission's order as confiscatory[2] (R. 6, 28). Amendment of March 4, 1913, to 266 of the Judicial Code; 37 Stat. 1013; 28 U. S. C. 380. Appellees' motion to stay the federal suit was granted by three federal judges on account of the filing of this suit, the suspension of the rate order herein until final judgment, and the statement of the Attorney General that appellees had no intention of enforcing the rate order until its validity was finally determined (R. 28-30).

This case was tried, commencing March 7, 1934 (R. 389), to a jury demanded by appellees. Appellant's motion to discharge the jury and for decision of all questions by the judge was overruled (R. 52-53).

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[2]The federal suit was against the Railroad Commissioners and City officials (R. 5). The Governor and State Attorney General were named for the limited purpose of receiving notice (R. 33). 266 of the Judicial Code, amended. The State of Texas was not a party (R. 4, 5).

Pleadings:

Appellees' petition was an express declaration upon the Commission's order of June 13, 1933, which order as well as the Commission's opinion was attached to the petition as an exhibit. See exhibit B of plaintiffs' original petition (R. 9-26). With respect to appellant's federal suit, appellees averred that "every constitutional and legal right" of appellant would be "fully safeguarded and protected" in the state court (R. 4-5), where appellees were "desirous of having the constitutional questions" decided instead of in the federal court (R. 6). The final judgment sought was that appellant be permanently enjoined from charging in excess of the 55 cent rate in Laredo (R. 6-7).

Appellant, in its amended answer filed shortly before trial (R. 31), alleged that the present fair value of its property used and useful to serve Laredo exceeded $1,225,000 both in 1932 and in 1933 (R. 39), and that the 75 cent rate and 55 cent rate were each confiscatory. The returns for 1932 and 1933 were set out at the 75 cent rate and after application of the 55 cent rate, when calculated upon the Commission's findings of fair value and depreciation allowance, and when calculated upon the higher property value which appellant claimed to be fair (R. 39-41)[6]. Appellant averred that the order was arbitrarily made, in that the Commission's findings were not supported by evidence, in that its findings were insufficient, and in that those findings that were made did not support the 55 cent rate (R. 31, 35-39). Appellant pleaded that the Commission's action

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[6]Compare bill of complaint, *Prendergast v. New York Telephone Co.* (No. 542, October Term, 1922), 262 U. S. 43, 47-48.

in fixing the 55 cent rate on the average of net revenues for four prior fiscal years (July, 1928-July, 1932) was arbitrary because average operating and economic conditions at Laredo in those prior years were greatly different from such conditions in 1932 and thereafter, and asserted that the Commission's method of estimating the new rate had a direct bearing upon its confiscatory operation (R. 35-39). Appellant alleged that the order was void under the due process and equal protection clauses of the Fourteenth Amendment, Constitution of the United States (R. 41-43). Appellant did not ask affirmative relief, but prayed that appellees' suit be denied (R. 43)[7].

Testimony:

Appellant's accounting and valuation testimony covered the two years involved in the enforcement of the Commission's order when the trial commenced, and was brought down as nearly as possible to the date of trial. This testimony was given in the light of the following local facts:

Municipal: Laredo is located in the southern part of Texas on the Rio Grande River. It has a population variously estimated from over 25,000 (R. 2) to over 30,000 (R. 978). The latitude is about 27½ degrees. The winters are short and mild. The population is largely of Mexican or Spanish-American descent (R. 953, 978). Natural gas has been distributed in Laredo since 1910 (R. 225). The service has a wider use than

[7]Compare appellant's prayer (R. 43) with statement as to the prayer by the Court of Civil Appeals (R. 418).

that of any other public utility in the city (R. 123-124, 177, 190, 626, 669). The city governing body of Laredo has been empowered to regulate gas rates and service within the city limits since 1907. Art. 1119, Revised Civil Statutes, 1925, Acts 1907, p. 217, Sec. 1. See also Sec. 12, Art. 1175 (Appendix 81) pertaining to cities of over 5000 population.

Company: Natural gas service in Laredo was begun by Border Gas Company. This company, from 1910 to April 10, 1928, owned and operated the Laredo distribution system, the pipe lines leading from Laredo to the gas fields, and the field gathering lines leading from the gas wells to the pipe lines (R. 11-12, 247-252, 238A). On April 10, 1928, these properties were sold to South Texas Gas Company, which transferred the Laredo distribution properties to Texas Border Gas Company (R. 12, 238A). South Texas Gas Company and Texas Border Gas Company were owned by what was known as the Moody-Seagraves interests (R. 602-603). About June, 1930, appellant, a company owning and operating other natural gas properties (R. 346), acquired the stock and other securities of these two companies (R. 645), and operated them until October 21, 1932 (R. 11, 12, 238A). At that time title to all the physical properties and other assets of South Texas Gas Company and Texas Border Gas Company, including the Laredo distribution system, pipe lines to Laredo and the field gathering lines, were conveyed to appellant (R. 11, 238A). The stock and mortgage bonds of these two companies which were held by appellant were

canceled at the time of conveyance (R. 244, 282-285, 369-372, 1104-1108).

Source of Gas Supply: For some years before this controversy arose, the gas used in Laredo was obtained from the Carolina-Texas and Jennings fields, each field being about 40 miles by pipe line from Laredo (R. 216B, map). The original source of supply had been Reiser field, which was only about 22 miles from Laredo (R. 225). As the Reiser field was becoming exhausted in 1916 (R. 225), a pipe line was laid from the Laredo main trunk line near Pescadito to the Jennings field (R. 216B, 225). Another pipe line was extended to the Mirando field, and later to the Schott field. The Mirando and Schott fields lasted only a few years (R. 216B, 226-227). The pipe line from the Laredo main trunk line to the Carolina-Texas field was started in 1922 and completed in 1923 (R. 216B, 226-227).

The gas fields in this area are numerous, but the "pools," or gas sands, are small in area and comparatively short-lived (R. 705). The wells "go dead," *i. e.*, fill with water, at fairly high pressures (R. 351-352).* In March, 1934, the gas was being drawn from the Carolina-Texas field by two companies and the field was approaching depletion (R. 127-128, 349-356, 359). The larger number of producing wells in the Jennings

*At the time of trial, the situation in the Carolina-Texas field was that the 3000-foot sand was entirely depleted (R. 355); in the 2600-foot sand, there were 4 producing wells and 5 which had gone dead at an average pressure of 192.5 pounds (R. 352); in the 2200-foot sand, 6 wells were producing and 2 had gone dead at an average pressure of 280 pounds (R. 352); and in the 2000-foot sand, 4 wells were producing and 16 wells had gone dead at an average pressure of 310 pounds (R. 351-352).

area were on the east side of the field (R. 216B, map), and the pressure of these wells was getting low (R. 649-650). It was appellant's plan, as the gas in Carolina-Texas and Jennings areas became exhausted, to serve Laredo through the pipe line extending from the Carolina-Texas field to the Cole-Bruni field and by extending the Pescadito-Jennings line to the Martinez field, about 10 miles southeast of Jennings (R. 216B, 353).

Property inventoried for appraisal: Appellant inventoried the Laredo distribution system, the pipe lines extending from the Carolina-Texas and Jennings fields and terminating in Laredo, and the field gathering lines* (R. 145-149). A copy of this inventory was furnished to appellees (R. 146), and inventory differences were reconciled (R. 297).

Used and Useful Property: Property jointly used for service both inside and outside the Laredo city limits was included in the inventory and separately appraised. The prorata part of the appraisal of these items—prorated according to use—was included in appellant's valuation exhibits. See defendant's exhibit 9 (R. 151-152); defendant's exhibit 12 (R. 174-175).

The pipe line extending to the Jennings field and feeding into the Laredo main truck line near Pescadito (R. 216B) developed excessive leakage in 1931 (R. 360). The leakage was principally in two "hot spots," *i. e.*, corrosive soil areas (R. 128-129). This line

*The Carolina-Texas field gathering system was leased from Southern Gas Company, and was not included in the inventory or the appraisals (R. 23, 157, 321).

was taken out of regular service until the sections running through these "hot spots" could be reconditioned (R. 359-360). The line was put back into regular service only once during the 12 months ended July, 1932. That was in March, 1932, when a blowup occurred in the line to the Carolina-Texas field (R. 231, 158). The Jennings line kept Laredo in gas until the Carolina-Texas line was repaired (R. 231). During the summer of 1933 the reconditioning work was completed, except that on the north end of the line between mile posts 27 and 30 (R. 359-360, 682, 704, 316-318). The Jennings line was put back into regular service during the fall of 1933 (R. 121-122, 127), and was then capable of carrying safe working pressures of from 200 to 250 pounds (R. 140). The material for the remaining reconditioning work was on the ground at the time of trial, and with the completion of that work the Jennings line would be in very satisfactory working condition (R. 360).

Revenues from industrial and commercial gas sales: The practice before the Commission was to credit receipts from industrial and commercial sales to gross operating revenues and ascertain appellant's over-all rate of return (R. 201, 218)[10]. An electric generating plant of Central Power & Light Company was located inside the city limits of Laredo at the time of this controversy (R. 110-111, 616-617). For a number of years

[10]The ordinance rates for industrial and commercial sales for fuel (R. 9) were set aside by the Commission (R. 26). There is no statute of Texas requiring or permitting the price of other industrial and commercial fuels, such as fuel oil, coal and coke, to be regulated.

appellant had sold large quantities of gas as fuel to operate this power plant (R. 105). During 1931, the power company completed a new electric transmission system, interconnected so as to serve Laredo and a number of other cities in the southern part of the State (R. 106). The electric energy for this new system was generated by four plants, all newer and more efficient than the plant in the city limits of Laredo (R. 109). The Laredo power plant was taken out of regular operation because it was obsolete and inefficient (R. 109, 110-111, 616-617). The plant was not to be operated thereafter, except as a stand-by unit in emergencies (R. 109). The gas required for emergency operation was nominal, such sales amounting to $54.40 in 1933 (R. 88C, 107, 109).

An oil refinery at Laredo, Motor Fuel Products Company, was closed in 1931 on account of operating losses of over a half million dollars (R. 110). These operating losses were encountered because of the low gasoline content of the crude oil available for refining, because the Laredo area did not provide an adequate market for the refined products, and because the refinery at Laredo could not compete with other refineries for other markets due to higher transportation charges from Laredo to those markets (R. 112). For several years before this refinery closed, appellant had sold it substantial quantities of gas for fuel (R. 113).

Accounting records: The early records of the old Border Gas Company were inaccurate and incomplete (R. 15, 99, 781-789). Appellant's district office and general office records were kept in the regular course

of business, were audited annually by an independent firm of auditors, and were the source of all company accounting information, as well as all reports to governmental agencies (R. 68). The expense of field and local operations, such as transmission and distribution system operations and maintenance, meter reading, customer's billing and collections, local advertising and new business expense, were recorded on the district books of account, Laredo being a distribution district operating point (R. 70-73, 80-83, 222-224). All administrative and executive salaries and expenses, from local and district managers up, were carried on the general office books of account at Houston, Texas (R. 74-75, 222-224). Part of the operating functions were performed from or by the general office at Houston, including all valuations, insurance and safety, construction accounting, general accounting, maintenance and operation of telephone lines, gas dispatching and tax and certain administration, medical, engineering, legal, new business and advertising (R. 73-78, 100-101, 222-224). Appellant served gas in a number of other cities and towns (R. 346), and operated several other gas companies. Each kind of general office expense was prorated in accordance with a separate study of the factors causing that expense (R. 73-78). See defendant's exhibit 2 (R. 1137-1200)." Appellees' repre-

"The proration factors were the result of careful study. For example, both insurance and employees and public safety were handled by one department. Studies disclosed that this department devoted 43.7 per cent of its time to insurance, the remainder to safety. Salaries and expenses for handling insurance were prorated according to the amount of premiums. Safety included the handling of workmen's compensation insurance coverage

resentatives had free access to all appellant's records at all times (R. 813-814).

Accounting and valuation testimony: Appellees made out their prima facie case by introducing the Commission's order, including the opinion (R. 64; see folios 18-48, R. 9-26).

Appellant proved that at prevailing rates, its net operating revenues in Laredo, before providing for depreciation, were $58,776.01 in 1932 (R. 69), and $38,932.60 in 1933 (R. 79), and that after providing 3 per cent of $885,000 for depreciation, and computing domestic gas sales at the 55 cent rate, appellant's net return would be $10,086.25 for 1932, and a deficit of $8,114.19 for 1933 (R. 93). The non-recurring revenues from sales of gas for industrial fuel to Central Power and Light Company and Motor Fuel Products Company were shown both for the four prior fiscal years (July, 1928-July, 1932), upon the revenues of which the Commission had estimated the 55 cent rate (R. 22, 23), and for the years involved in the enforcement of the Commission's order, 1932 and 1933 (R. 88A-88C).

Appellant introduced the inventory of property used to serve Laredo (*supra* p. 10), appraised so as to show

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11—*Continued*—
and claims, as well as other safety work. That expense was related both to hazards and to the number of employees. The salaries and expenses for safety were divided according to workmen's compensation premiums and number of employees, each factor given equal weight (R. 1166-1167). Telephone lines are used in dispatching gas. Some telephone lines were owned, others leased. Costs of operating telephone lines were prorated according to mileage of owned and leased lines (R. 1175). But telephone line maintenance expense was prorated on the basis of mileage of owned lines only (R. 1191).

reproduction cost at prices prevailing August, 1932, less depreciation (R. 151-155, 159-166), and also appraised to show reproduction cost as of December, 1933, less depreciation (R. 174-175). Reproduction cost less depreciation before including going value was shown to be $1,071,179 for 1932 (R. 152), $1,097,318 for 1933 (R. 175), and after including going value, $1,191,179 for 1932 and $1,217,318 for 1933 (R. 152, 175, 178, 191).

In rebuttal, appellees introduced testimony showing that net revenues from sales of gas in Laredo at prevailing rates, without applying the 55 cent rate and without making any deduction for depreciation or income tax, were as follows:

Twelve Months Ended:	Including Non-recurring Revenues (R. 253)	Excluding Non-recurring Revenues and Gas Purchases (R. 291)
June, 1929 . . .	$149,452.24	$104,148.59
June, 1930 . . .	162,331.42	100,257.84
June, 1931 . . .	129,347,66	94,206.71
July, 1932 . . .	80,308.47	69,086.63
December, 1933 .	65,524.16	65,469.76

Compare defendant's exhibit 5 (R. 88A-88C).

Appellees introduced an exhibit styled "United Gas Public Service Company—Historical Cost of Fixed Capital—Old South Texas Gas Company and Texas Border Gas Company Systems, Excluding Jennings to Roma Transmission System Property" (R. 237). The opening entry to fixed capital on the books of the old Border Gas Company was eliminated by appellees' accountant in setting up the figures shown by this exhibit (R. 246-252). This opening entry was $550,000 (R. 249). There was substituted therefor $166,996.68 (R.

238A, 250), which was the starting figure of the computation upon which Border Gas Company claimed depreciation for income tax purposes (R. 250). No attempt was made to segregate the fixed capital accounts so as to show the investment for property used only to serve gas within the city limits of Laredo. Fixed capital as shown by appellees' said exhibit, after deducting all investment for property which had been retired, was $1,153,232.98 as of December 31, 1932, and $1,151,993.65 on December 31, 1933 (R. 237).

Appellees introduced an appraisal of *part* of the property included in the agreed inventory (R. 297) and used to serve Laredo (R. 302, 316, 321). The appraisal was on the basis of prices of December, 1933 (R. 297), and amounted to $690,261 before certain minor corrections (R. 299), and $698,047 after these corrections were made (R. 330).

Verdict and Judgment:

The trial court refused to submit the case to the jury in a way which would permit the facts to be found (R. 372-379, 383-387). The charge to the jury consisted of definition of terms and one question, as follows (R. 380-382):

> "SPECIAL ISSUE No. 1. Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five-cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company? Answer this question 'Yes,' or 'No'." (R. 382.)

The jury answered this question "No" (R. 387). Judgment was entered April 24, 1934 (R. 389). Although the charge and verdict were recited in the judgment (R. 390), the refund provision of the order (R. 26) was declared invalid and the order was held unenforceable for 1932 and 1933 and down to date of judgment (R. 390-391). However, appellant was enjoined from thereafter charging in excess of the 55 cent rate in Laredo, unless the Commission's order was changed or modified (R. 391). The order staying enforcement of the 55 cent rate was dissolved (R. 391). Appellant's motion for new trial (R. 392-400) was overruled on the day the judgment was entered (R. 401).

COURT OF CIVIL APPEALS

Appellant duly appealed to the Court of Civil Appeals (R. 401-402).

Errors Assigned: Appellant asserted that the evidence in the record most favorable to appellees showed that the Commission's order was confiscatory from January 1, 1932, to the date of trial (Assignments 3, 6, 7 and 9, R. 403-405); that the 55 cent rate was fixed on the assumption that appellant's net revenues from January 1, 1932, would be equal to the average of its revenues in the four fiscal years July, 1928-July, 1932, and that the undisputed evidence showed this assumption to be incorrect (Assignments 2, 5 and 10, R. 403, 404, 406); and since all the proof showed that the 75 cent rate had not produced just compensation from January 1, 1932, down to the time of the trial, it was

beyond the power of the Commission to impose the lower 55 cent rate (Assignments 1, 4, 8, R. 403-405). Upon these grounds, appellant sought reversal and rendition of the judgment below (R. 414)[12].

As grounds for reversal and remand, appellant asserted error under the state law in refusing to submit the case on special issues. Submission on special issues was the only method by which findings of fact could be secured in a jury trial (Assignments 10-14, R. 406-407)[13]. The manner in which the case was submitted to the jury was assigned as denying appellant a trial in accordance with due process of law on its defenses of confiscation under the Federal Constitution (Assignment 18, R. 407). Further error was assigned to the manner of submitting the case to the jury, in that appellant was thereby denied knowledge of the grounds for the verdict and of the grounds for any judgment based thereon, and was prevented thereby from reserving for state and federal appellate review questions as to the existence of evidence to support the judgment (Assignment 19, R. 407). Appellant also assigned error in that the action of the trial court in rendering judg-

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[12]See appellant's motion for rehearing (R. 429-434), showing that Assignments 1-10 were submitted in the Court of Civil Appeals as similarly numbered propositions.

[13]Under Article 2189, Revised Civil Statutes (Appendix 85), a request for submission on special issues is mandatory, and it is reversible error to require a jury to determine by one answer two or more issues of fact. *Fox v. Dallas Hotel Co.*, 111 Tex. 461, 475-477. The reasonableness of a legislative act is a question of law for the court, and if such question involves disputed facts, those fact issues are to be resolved by the jury in a jury trial, and the question of reasonableness then determined by the judge from the facts as found by the jury. *Missouri, Kansas & Texas R'y Co. v. District*, 117 Tex. 34, 50-51.

ment on the verdict of the jury constituted an attempted delegation to a jury of the power to decide, as a matter of law, whether the Commission's order was repugnant to the Federal Constitution (R. 407). The refusal to submit to the jury each of appellant's specially requested issues on property value, so that findings of fact could be had upon the claim that the Commission had undervalued appellant's property, was also assigned (R. 408-410).

Opinion:

The Court of Civil Appeals first made its statement of the case (R. 410-414). Then, before reviewing any of the testimony, the Court of Civil Appeals announced (R. 414):

> "We have reached the conclusion * * * that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55c rate order was * * * confiscatory. In view of this conclusion, all questions of practice * * * go out of the case."[14]

[14]These so-called questions of practice included the assignments upon denial of a trial in accordance with due process, upon denial of an opportunity to know the grounds of judgment, and upon refusal of the trial court to permit the facts to be found. Of course, these were matters of substance, and not of practice, as stated by the Court of Civil Appeals. See the statement in the opinion (R. 414) that "Part II" of the brief presented appellant's propositions 11 to 79, and compare Assignments 10 *et seq.* (R. 406-410) with appellants' motion for rehearing (R. 448-453) showing that appellant's Assignments 11-79 were presented as similarly numbered propositions.

From this conclusion (R. 414), down to the point where the Court of Civil Appeals attempted to reframe appellant's propositions 1-10 (R. 420), the opinion consists almost entirely of testimony offered by appellees, or of matters not supported by the record. Appellant's claim of confiscation from undervaluation of its property was touched upon only in the following sentence: "Appellant's witnesses placed its value at slightly over one million dollars" (R. 415), and this claim was not mentioned or considered thereafter.

The Court of Civil Appeals said that appellant, by propositions 1 to 10, was contending that the Commission's order was confiscatory "on two grounds, as follows" (R. 420). Then grounds numbered 1 and 2 were set out (R. 420-421). Neither ground 1 nor ground 2, as stated by the Court of Civil Appeals, covers appellant's assignments asserting that the 55 cent rate was shown by the undisputed evidence in this record to be confiscatory in its operation from the order's effective date to the time of trial. See Assignments 3, 6, 7 and 9 (R. 403-405); and compare motion for rehearing (R. 429-433).

Rules announced for determining appellant's claims of confiscation: The court stated the following rules:

> "The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years * * *. The reason for the rule is * * * that any business may fluctuate from year to year because of changing conditions or circumstances * * *; ordinarily, a test of five years or more next preceding the in-

quiry, if available, is selected. It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, * * * before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate. And while the equal protection, the due course and the due process clauses of the fundamental laws of both state and nation guard against * * * compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right under all conditions and circumstances to have a return upon the value of the property so used" (R. 421-422).

Interpretation and practical application of the rules announced: The Court of Civil Appeals found that appellant had not put the 55 cent rate to a test by actually charging that rate, but had "continuously charged and collected the 75c rate" (R. 422). The court said that "an actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business" (R. 422), and that "this court would not be warranted in holding the lower rate was * * * confiscatory, * * * in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant

failed, as a matter of law, to show the rate * * * confiscatory * * *."

The alternative rule that the court on appeal must resolve all doubts against appellant and pare down valuations unsparingly (R. 421) in the absence of proof of the required character (R. 414) *i. e.*, confiscation in fact from actually charging the 55 cent rate (R. 421), was applied in this way:

> "The auditor for Laredo showed * * * that the average net revenue for the 5-year period used in the trial court, less annual depreciation of 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 8.46%. If under the rule that in absence of any actual test of the new rate, the court must resolve all doubts against appellant, and pare down unsparingly valuations, and if the lowest valuation shown by the evidence (about $700,000) is used in the calculation, then the average net return received by appellant under the existing rate for the 5-year period, would yield an average annual return of more than 10%. The same calculations of the auditor also show that if the average net revenues for the 4-year period used in the hearing before the Commission are utilized, such revenues, less 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 9.47%. If the lower $700,000 valuation is used in the calculation, the average net revenues for the 4-year period would yield a return of more than 11%. * * * And manifestly the evidence of appellant did not show, as a matter of law, that the lower 55c rate would necessarily result in confiscation of its property; * * * when viewed in the light of aforementioned rules with regard to the quantum and character of proof required in such cases" (R. 425).

The lower court closed its opinion by interpreting the state statute (Art. 6058) under which appellant's appeals to the Commission had been taken (*supra* p. 3). The court held that while the express terms of the statute did not give the Commission the power to make the 55 cent rate retroactive or to require refunds, the statute was to be so construed as to include those powers (R. 427-428). The judgment below was reformed to enforce the 55 cent rate by refunds from January 1, 1932, and as so reformed, was affirmed (R. 428, 429). Whether, on the facts shown in this record, the Federal Constitution forbade the application of the refund provisions of *this order* was not considered (R. 425-428). Appellant's motion for rehearing (R. 429-457) was overruled without opinion (R. 458).

Attempts to Secure Further Appellate Review

The Supreme Court of Texas refused to grant writ of error, no opinion being written (R. 474, 479). The Chief Justice of the Court of Civil Appeals declined to allow an appeal to this court (R. 482-483). This appeal was allowed by order dated January 16, 1937 (R. 513-514).

SPECIFICATION OF ERRORS

Appellant intends to urge all except paragraph 4 of its Assignment of Errors (R. 511, 1408). These errors will be presented in argument under the following headings, each of which is germane to the assignment or assignments referred to in the margin:

I. Confiscation has been conclusively shown.[15]

[15]1. The Court of Civil Appeals erred in refusing to hold said order confiscatory upon the evidence of its actual operation from

II. The finding by the court below as to 1933 net return after enforcement of the 55 cent rate was wholly unsupported.[16]

III. The state court refused to pass upon appellant's claim of confiscation arising from the Commission's undervaluation of its property.[17]

IV. The retroactive refund provision of the Com-

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[15]—*Continued*—
its effective date (January 1, 1932), the record made at the trial (March, 1934) showing, when only that testimony most favorable to the order is considered, that its enforcement will limit appellant to a net return of 1-1/10 per cent for 1932, and to a net return of 2-1/10 per cent for 1933, when computed upon the rate base ($885,000 fixed as of August, 1932) and after providing the accrual to depreciation reserve (3 per cent per annum of $885,000), which were found and entered by the Commission as part of said order (R. 510, 1407).

13. And the said Court of Civil Appeals erred in refusing to hold said order void upon the evidence of its actual operation and effect presented in this case, which evidence showed without dispute that enforcement of the order will take appellant's property without due process of law, compel the use thereof without just compensation and deny appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 513, 1410).

[16]6. The Court of Civil Appeals erred in concluding that the enforcement of the order for 1933 would leave appellant a net return of more than 7 per cent of $700,000, such conclusion being contrary to all the evidence and wholly unsupported by any evidence in the record (R. 511, 1408).

[17]3. The Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the rate base ($885,000) used by the Commission in making said order was an arbitrary and unlawful understatement of the fair value of appellant's property used and useful to furnish gas service for Laredo (R. 510, 1408).

mission's order was upheld without finding the facts essential to determine the effect upon appellant's constitutional rights.[18]

V. The holding that the evidence was insufficient, as a matter of law, to show confiscation—in so far as the holding was upon evidence—was based upon consideration of only certain testimony offered by appellees.[19]

VI. The lowest appraisal estimate to be found in the record was used as the basis for such calculations of return as were made in the state appellate court.[20]

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[18]11. The Court of Civil Appeals erred in enforcing the retroactive refund provisions of the order in respect of appellant's completed operations of 1932 and 1933, without findings of fact—and without competent evidence as the basis for findings such as would support such action, if any findings were made—upon fair value, reasonable rates of return and depreciation reserve accrual, and net earnings before and after the enforcement of the order for said years (R. 512, 1410).

[19]5. The Court of Civil Appeals erred in holding that the evidence was insufficient, as a matter of law, to show that the Commissioner's order was confiscatory, because such holding was made, in so far as it was based upon evidence, upon consideration of only certain portions of the testimony offered by appellees, and not by considering, weighing and passing upon, in the exercise of independent judgment as to facts and law, all of the facts pertinent to confiscation established by competent evidence (R. 511, 1408).

[20]9. The Court of Civil Appeals erred in computing appellant's supposed rate of return, both for 1933 and as represented by such average revenue calculations, upon a figure of $700,000 for rate base, such $700,000 figure representing the lowest valuation estimated by any witness at the trial and being offered by an engineer witness for appellees as showing estimated reproduction cost, less depreciation, at the end of 1933, the court erroneously refusing to decide confiscation from a judicial determination of fair value made in the exercise of independent judgment applied to all competent evidence thereof (R. 512, 1409).

VII. Controlling weight was given to revenues of four prior years at the 75 cent rate in deciding that the evidence was insufficient to show that the 55 cent rate was confiscatory.[21]

VIII. Because the new, lower, retroactively effective rate had not been put to an actual test, appellant's evidence was held, as a matter of law, insufficient to show confiscation.[22]

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[21]7. The Court of Civil Appeals erred in giving controlling effect to calculations—first made in the Court of Civil Appeals—purporting to show an average of gross revenues, operating expenses, and net revenues at the 75 cent rate for a period of four prior fiscal years (July 1928-July 1932), and in using such average for the purpose of predicting the effect of said final order upon appellant's revenues subject to regulation thereby, all the evidence at the trial showing that the application of said order to appellant's actual operations since January 1, 1932, will clearly result in confiscation of appellant's property, and all of the evidence further showing that the conditions affecting appellant's business during the four prior years used for said averages were greatly different from such conditions prevailing at and after the order is made effective (R. 511, 1408-1409).

8. The Court of Civil Appeals erred, in connection with such calculations, in arbitrarily eliminating therefrom large outlays for operating expenses actually and in good faith incurred in said four prior fiscal years, without any competent evidence in the record to support such elimination (R. 512, 1409).

[22]10. The Court of Civil Appeals erred in holding that, appellant not having put the 55 cent rate to a test, the evidence was insufficient to show confiscation, despite the fact that the record herein shows without dispute that the 75 cent rate was itself confiscatory, it yielding, upon the testimony most favorable to the order and upon the $885,000 rate base and 3 per cent depreciation reserve accrual found by the Commission, a net return of only 3-6/10 per cent for 1932 and of only 4-4/10 per cent for 1933, and despite the showing in the record that a test of said 55 cent rate, in the usual meaning of that term, was rendered impossible by the retroactive operation of the rate order and by the stay order entered in this suit at the instance of appellees (R. 512, 1409-1410).

2. The Court of Civil Appeals erred in treating the presump-

IX. The court below failed to give appellant that independent consideration of both the facts and the law which is essential to the proper judicial review of a rate order claimed to be confiscatory.[23]

ARGUMENT

Summary of Argument.

The order reducing appellant's rates from 75 cents to 55 cents per 1000 cubic feet of gas was not entered until June 13, 1933, but the new rate was made effective January 1, 1932. The trial commenced in early March, 1934. The evidence was brought as nearly as practicable to the date of trial, it covering appellant's operations for 1932 and 1933 and the local conditions obtaining in those years. Taking as the rate base the $885,000 present fair value fixed by the Commission, using its annual depreciation allowance of 3 per cent, and using only the operating figures shown by undisputed evidence, or by the testimony most favorable to

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[22]—*Continued*—
tion in favor of the validity of the Commission's order as irrebuttable by the undisputed evidence showing that, upon the Commission's own findings of property value and depreciation accrual, the enforcement of the order will clearly deny appellant just compensation for the use of its property during the two years between the effective date of the order and the time of trial (R. 510, 1408).

[23]12. The Court of Civil Appeals erred in failing and refusing to give appellant that independent consideration of both the facts and the law which is essential to a proper judicial review of a rate order claimed to be confiscatory, if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States (R. 512, 1410).

the order, the enforcement of the 55 cent rate would leave appellant a net return of 1-1/10 per cent for 1932 and of 2-1/10 per cent for 1933. Thus the order seeking to impose the new rate was shown by unimpeachable evidence to be confiscatory upon the Commission's own findings.

The Court of Civil Appeals' only calculation of the result of enforcing the 55 cent rate was for the year 1933. As to this calculation, the Court said that the lower rate would afford appellant a net return for 1933 of more than 7 per cent, based on a valuation of $700,000. No combination of figures in the record will produce such a result. Using Commission findings and only the testimony most favorable to the Commission's order, the highest return for 1933 at the 55-cent rate would be 2-8/10 per cent of $700,000. The Court refused to correct this overcalculation when pointed out to it by motion for rehearing. Nor did it try to learn the effect of the 55 cent rate for 1932. Calculated on the most favorable testimony, appellant's net return for 1932 at the 55 cent rate would be only 1-7/10 per cent of $700,000.

The Commission valued appellant's land, distribution lines, transmission lines and all its other property and equipment at $885,000, and refused to make separate findings as to the principal items entering into this valuation. To prove that this lump-sum valuation was entirely inadequate, appellant introduced evidence of the value of each classification of property used to render the service, and showed that the total amounted to much more than $885,000. Appellant's evidence was substantial, and was of the kind universally held perti-

nent to show the fair value of public utility property for rate purposes. The Court of Civil Appeals refused to give any consideration whatever to this evidence, or to make or require findings based upon it, and thereby failed to perform its judicial duty with respect to a matter upon which the preservation of appellant's federal constitutional rights depended.

The trial court refused to uphold the Commission in ordering appellant to refund the excess over what collections would have been, had the 55 cent rate been charged from January 1, 1932. On October 30, 1935, the Court of Civil Appeals reformed the judgment of the trial court so as to require such refunds. The undisputed evidence showed that the Commission's order as enforced by this reformed judgment would confiscate the use of appellant's property for 1932 and 1933. The Court of Civil Appeals ignored and made no findings based on this evidence. The record was closed when the judgment of the trial court was entered in April, 1934. The record on appeal did not and could not disclose the facts with respect to appellant's operations and the result of enforcing the 55 cent rate in 1934 and 1935. As to these years, the Court of Civil Appeals acted without evidence. The Court's duty to give effect to what was established by proof, to act only upon appropriate findings supported by evidence and thus to determine whether the Constitution prohibited this enforcement of the 55 cent rate, was not performed.

In reaching the conclusion that the evidence was insufficient, as a matter of law, to show confiscation, the Court of Civil Appeals gave no consideration to appellant's evidence, and only part of the testimony in-

troduced by appellees was used. This was not the independent judicial review as to both law and facts assured to appellant by the due process clause.

$700,000—not $885,000—was the basis of such calculations of return as were made by the Court of Civil Appeals. $700,000 was the property appraisal of the only engineering witness produced by appellees at the trial, and this appraisal estimate was selected solely because it was the lowest figure to which any valuation witness had testified. The Court adopted this figure without considering how the appraisal was made, the competency of the witness to make a reliable appraisal, or the reasons offered to support it. The opinion of this one witness was made absolutely conclusive, not only against all other proof of property value whatsoever, but against the Commission's present fair value finding of $885,000 on which the 55 cent rate was based.

The $700,000 appraisal did not include the pipe line to the Jennings field. The estimate was at prices of December, 1933, after deducting depreciation which had occurred by the end of that year. On the basis of $700,000, the Court of Civil Appeals computed the rate of return represented by two averages of purported net revenues. The first average covered the four fiscal years July, 1928-July, 1932, and the calendar year 1933. The second average covered the four fiscal years. Both were mathematical averages, each year being given equal weight. All revenues were at the 75 cent rate. The 55 cent rate was not applied. The average operating and economic conditions at Laredo over the four fiscal years were greatly different from conditions in the period as to which the Commission sought to impose the 55 cent

rate. These mathematical averages gave controlling weight to the purported earnings of the four prior fiscal years. Appellant's claim was that the 55 cent rate would confiscate the use of its property by depriving it of just compensation for service rendered from January 1, 1932. The averages were delusive, and their use to uphold the Commission was to employ past earnings to impose present confiscation. The rate of earnings in one economic era is not to be decided on the basis of valuation as of a different era. The prior earnings used as the basis for prophesying a new rate are not to control over operations to which the new rate applies. The Court of Civil Appeals preferred prophecy to the event. Its method of determining confiscation in fact is unknown to the law.

The Court of Civil Appeals sought to justify these acts by holding that in the absence of an actual test of the reduced rate an appellate court deciding confiscation *vel non* must pare down values unsparingly and resolve all doubts against the complaining party. The so-called "test" cases cited by the Court are inapplicable. Here, the 75 cent rate, which had been in effect since 1921, had become confiscatory by 1932, it yielding on the Commission's rate base, after providing 3 per cent thereof for depreciation, a net return of 3-6/10 per cent in 1932, and of 4-6/10 per cent in 1933, using only the testimony of operations showing the highest percentage of return. The 55 cent rate was not in existence until June, 1933, and was suspended in July, 1933 until final judgment in this suit. Under these facts, appellant could produce neither the kind nor quantity of proof the Court's ruling required. Under the

ruling, the presumption in favor of the Commission's action was made irrebuttable, as that presumption could be overcome only by proof impossible to produce. This was to hold that, to get the protection the Constitution affords, the rights sought to be protected must be surrendered.

The Commission's order has been shown confiscatory in its actual operation by proof not fairly open to debate. But apart from that showing, the arbitrary refusal of the Court of Civil Appeals to consider appellant's evidence of confiscation and of fair value, its imposition of refunds by completely ignoring the undisputed evidence disclosing the confiscatory result, its imposition of refunds for years as to which the record on appeal could contain no proof, its misuse of net revenue averages of prior years, its conclusive preferences for prophecy over fact, for the opinion of one valuation witness and for proof impossible to produce, have denied appellant the rudiments of the trial to which it is entitled under the due process and equal protection clauses of the Federal Constitution.

I.

Confiscation Has Been Conclusively Shown.[24]

A simpler rate case than this one could scarcely be imagined. That is because confiscation appears upon the Commission's findings and the undisputed evidence of operations involved in the enforcement of the Commission's order. The Court of Civil Appeals could have ignored appellant's contention that the Commis-

[24] Assignment 1 (R. 510, 1407).

sion had undervalued its property. That Court did not have to concern itself with resolving conflicts in the evidence showing the operations affected. It needed only to turn to the order itself to find that the Commission had found $885,000 as the present fair value of appellant's property (R. 25), 7 per cent of that amount reasonable for annual return (R. 25) and 3 per cent per annum proper for depreciation (R. 21). It might then have turned to the record and found that the Commission's rate base, as well as its other findings, fully reflected economic conditions existing at the time the 55 cent rate was to take effect, since the property appraisals before the Commission were at the very low prices prevailing in July and August, 1932 (R. 200A, 215). The hearing before the Commission had been on present replacement values with full consideration given to depression prices (R. 197). Reference to the record would then have disclosed undisputed evidence showing the company's revenues for 1932 and 1933 at the existing 75 cent rate (R. 85), as well as its revenues for those years with the domestic gas computed (R. 99)—not estimated—at the 55 cent rate. See defendant's exhibit 6 (R. 93). Then, to determine the net revenue for those years, the Court could have found that the operating expenses for the year 1932 were shown by undisputed proof (R. 69, 93), and that this figure contained no charge for accrual to the depreciation reserve (R. 74). Further reference to the record would have revealed that certain of appellant's operating expenses in 1933 had been omitted by appellees' accounting witness. To avoid the necessity of considering the propriety of these omissions, the Court

could have ignored the 1933 operating expenses as they actually were (R. 79, 93), and could have used the 1933 operating expenses as shown by appellees (R. 253). This figure contained no provision for depreciation or income tax (R. 253).

Then if this evidence—evidence undisputed by appellees, or given by their own witnesses—had been tabulated by the Court, it would have shown the following:

	Year Ended December 31, 1932	Year Ended December 31, 1933
Operating revenues, with domestic gas sales computed at the 55 cent rate (R. 93)	$161,637.65	$138,256.85
Operating expenses, before depreciation reserve accrual	$125,001.40 (R. 69, 74)	$ 93,298.46 (R. 253)
	$ 36,636.25	$ 44,958.39
Depreciation reserve accrual; 3 per cent of $885,000, as found reasonable by the Commission (R. 21)	26,550.00	26,550.00
Net return	$ 10,086.25	$ 18,408.39
Rate of return on $885,000	1-1/10 per cent	2-1/10 per cent

Nothing can be said by way of argument that will add anything to what these figures show.

II.

The Finding by the Court Below as to 1933 Net Return After Enforcement of the 55 Cent Rate Was Wholly Unsupported.[25]

The effect of the enforcement of the 55 cent rate for 1932 was ignored by the Court of Civil Appeals, but appellant's 1933 operations were considered sufficiently to produce a gross miscalculation of the rate of return during that year upon the $700,000 valuation figure used by the Court. The Court declared:

> "And calculations based on the $700,000 and the estimated difference in revenues between the 55c rate and the 75c rate, show a return of more than 7% for the year 1933" (R. 422).

The computation by which this result was reached is not revealed and there is no combination of figures appearing in the record for the year 1933 which will produce any such result. The $18,408.39 (*supra*, p. 34) net amount for return after provision for depreciation at the rate fixed by the Commission, *i. e.*, 3 per cent of $885,000, is obviously not 7 per cent, but only about 2-6/10 per cent, of $700,000.

The $700,000 used by the Court of Civil Appeals is an approximation of the appraisal estimate of appellees' witness Elrod, after Elrod had excluded the pipe line

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[25] Assignment 6 (R. 511, 1408).

to the Jennings Field (R. 302). See plaintiffs' exhibit 12, "Total Value, Depreciated * * * $698,047" (R. 330). Elrod testified that he used the sum of $829,559 as the base upon which to compute depreciation at the annual rate of 3 per cent. $25,000 is a close approximation of 3 per cent of that amount and is the figure used by the Court in its computation No. 4 on page 419 of the record. If $25,000 for depreciation is used in the calculation which the Court of Civil Appeals was attempting, the net return would be:

	Year Ended December 31, 1933
Operating revenues after enforcement of the 55 cent rate	$138,256.85 (R. 93)
Operating expenses, as shown by appellees	93,298.46 (253)
Net revenues before provision for depreciation or income tax	$ 44,958.39
Provision for depreciation as given by appellees' witness Elrod (R. 322-323, 330)	25,000.00
	$ 19,958.39 or about 2-8/10 per cent of $700,000[26]

[26]If the most favorable figures in the record be used to compute the return for 1932 (not mentioned by the Court) on the Court's valuation figure of $700,000 and using the $25,000 depreciation figure, the following results:

There are no lower figures in the record upon which to base such a computation. Thus, the only time the Court gave even passing consideration to the result of enforcing the 55 cent rate, the return was overstated by a margin which measures the difference between a return which is clearly confiscatory and the return which the Commission said appellant was entitled to receive.

The error was called to the Court's attention in appellant's motion for rehearing (R. 438), but was ignored.

III.

The State Court Refused to Pass Upon Appellant's Claim of Confiscation Arising from the Commission's Undervaluation of Its Property.[27]

At the hearing before the Commission appellant offered proof showing reproduction cost new less depreciation as of August 1, 1932, to be $1,252,438 including

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[26]—*Continued*—

	Year Ended December 31, 1932
Operating revenues after enforcement of the 55 cent rate	$161,637.65 (R. 93)
Operating expenses (undisputed by appellees)	125,001.40 (R. 93)
Net revenues before provision for depreciation	$ 36,636.25
Provision for depreciation as given by appellees' witness Elrod (R. 322-323, 330)	25,000.00
	$ 11,636.25 or about 1-7/10 per cent of $700,000.

[27]Assignment 3 (R. 510, 1408).

going value, $1,097,356 without going value (R. 200A). The City's witness Elrod appraised the property at $810,698, using prices prevailing July 31, 1932 (R. 208, 215). The City also offered proof showing the historical cost of fixed capital, as of July 31, 1932, to be $1,048,853.65 (R. 1374A).[28] Appellant moved the Commission to make separate findings as to each principal item of property (R. 235), but this motion was ignored and the present fair value of all appellant's property of every kind was stated in the round sum of $885,000 (R. 25). Appellant was thus left without any means of knowing how the valuation was arrived at and the only reasonable conclusion is that it was arrived at by accepting almost *in toto* the evidence of the City's witness Elrod and rejecting with equal completeness the testimony of appellant's witnesses. This conclusion is justified, not only by the small difference between Elrod's figure and the Commission's figure, but by the discussion of the appraisals in the Commission's opinion (R. 14-22).

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[28]This figure contained investment for property for use outside as well as inside Laredo. The $1,048,853.65 was a "spot" figure as of July 31, 1932, and was after deduction of $118,318.09 (R. 1374A) as net retirements in reconditioning the main trunk and Pescadito-Carolina-Texas transmission lines into Laredo (see second footnote, R. 1374A), without crediting the cost of the replacements installed in this reconditioning job. See plaintiffs' exhibit 4 "Recondition 6" and 8" lines Laredo Area . . . $87,709.47" (R. 237); see map R. 216B. The opening entry in the fixed capital records of the old Border Gas Company, $550,000 (R. 249-252, 787-788), was elimated by appellees' accountants—and appellant thinks it should have been—but $166,966.68 was substituted therefor (R. 250, 787-788), to which appellant takes exception, as the $166,966.68 was the opening figure in the depreciation base used and accepted in computing depreciation for federal income tax purposes, and included neither non-depreciable property, nor expenditures incurred and classified as intangible fixed capital.

In its amended answer appellant asserted that the fair value of its property exceeded $1,225,000 both in 1932 and in 1933 (R. 39), and that the rate fixed on the lower valuation by the Commission would result in confiscation of its property (R. 40-41).

At the trial appellant's 1932 reproduction less depreciation appraisal was $1,071,179 (R. 152) and its 1933 appraisal $1,097,318 (R. 175), both exclusive of going value. Including going value, appellant's 1932 appraisal was $1,191,179 (R. 152, 178, 191) and its 1933 appraisal $1,217,318 (R. 175, 178, 191). Historical cost, as shown by appellees, no proration of investment for service outside Laredo being made, was $1,153,232.98 as of December 31, 1932, and $1,151,993.65 as of December 31, 1933 (R. 237).[28] Elrod's appraisal, as of December 31, 1933, excluding the pipe line to the Jennings Field, and after final correction, was $698,047 (R. 299, 302, 330).

Appellant's proof was substantial. In view of the unreliability of the original company's early records (below, Note 29), the only practical way to obtain

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[28] Appellant offered no testimony of actual or historical cost. The early property records of the old Border Gas Company were found to be both inaccurate and incomplete (R. 14-15, 787-788). Appellant's accountant refused to support them (R. 99). This was not only on account of the unsupported opening entry (R. 787-788), but because charges that should have been made to capital were not made (R. 99). The unit for rate making purposes was the area within the corporate boundaries of Laredo (R. 9-26). That the entries to fixed capital could not be classified as between different types of service property, nor the investment in property for service solely within the Laredo city limits segregated from investment in property jointly used for service inside and outside those limits, is evidenced by the fact that the City's accountants did not attempt such a segregation (R. 237-238A).

proof of value in any degree accurate and conforming to the territorial unit involved was to prepare an inventory of the property solely or jointly used for the service, appraise that property by computing the cost of material and installation, deduct depreciation, and prorate the appraised cost of jointly used property items. This was the method followed, inventory differences being first reconciled (R. 297). See defendant's exhibit 9, 1932 (R. 151) and exhibit 12, 1933 (R. 174) and plaintiffs' exhibit 9, 1933 (R. 298) and exhibit 12, correction of plaintiffs' exhibit 9 (R. 329). See also property appraisals at the Commission hearing (R. 200A, 203).[30]

The substantial nature of appellant's evidence is accentuated by a comparison of the character of its proof with the testimony of the engineer witness as to value tendered by appellees. This one witness was used by the State and all the other appellees, including the Railroad Commissioners, and his testimony was not supported by any of the Commissioners, by any of the Commission's engineering staff, or in any other manner.

Appellant's 1932 and 1933 appraisals represented the judgment of Greene, appellant's chief engineer (R. 141). In the three and a half years before he testified, Greene had designed, prepared plans and specifications for, and supervised the construction of natural gas properties, gathering and transmission lines, and distribution systems, as well as compressor stations and gasoline plants, costing about $30,000,000 (R. 141-148). Appellant's appraisals also represented the judgment

[30]The record brought up to this Court shows only valuation summary sheets of the appraisals.

of Biddison. Biddison, either as engineer or in direct charge of construction, had to his credit the building of approximately 7000 to 8000 miles of natural gas transmission lines, and natural gas distribution systems serving in excess of 500,000 meters (R. 184).[31] These men were not professional or expert witnesses, but designers and supervisors of construction. Both of them had been entrusted with responsibilities such as are given only to men of sound, seasoned and experienced judgment.[32] The large amount of natural gas construction work over which Greene had supervision gave him an unexcelled opportunity to check the accuracy of his judgment in respect to natural gas construction costs. Before the first of each year, Greene made or supervised the making of separate, detailed estimates of the cost of each construction job proposed for the coming year. Upon the basis of Greene's estimate of costs, construction funds were provided (R. 142-144). Greene supervised the making of detailed designs, plans and specifications for each project, the preparation of bills of material and requisitions therefor, he provided direct engineering supervision on the construction sites, and was responsible for daily and weekly progress reports. Greene was also responsible for the final completion

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[31]Greene prepared appellant's appraisals (R. 149-155; 173-175) and Biddison checked and analyzed the underlying figures except those for minor property classifications appraised at very small sums (R. 185-189).

[32]Greene had testified only once before a commission (in the hearing of this case before the Railroad Commission), and never before in any court (R. 141). Biddison had testified in six cases, three before the Texas Commission, two in Alabama, and one before the Kansas Commission (R. 1224).

reports and construction cost analyses, which included a comparison of the costs of construction as estimated by Greene and as actually incurred (R. 144). Greene testified that upon the construction work he had handled beginning in 1930, his construction cost estimates had averaged within 2 to 3 per cent of the actual cost, although occasionally his estimate would be from 5 to 10 per cent in error (R. 180).

The two appraisals of the Laredo properties were prepared in practically the same way as Greene would make up an expenditure requisition for a construction job, the unit costs being those conforming to the conditions to be met in the Laredo area (R. 179). The inventory was treated as the bill of materials. Test holes were dug both to determine the types of underground equipment and to inspect for condition.[33] General construction costs were computed from analyses of these costs as actually encountered in Greene's experience. Where payrolls were involved in the computation of these costs, the wages being paid by appellant to men holding like positions were used (R. 166-171). See defendant's exhibit 10 (R. 159-166). Greene's costs of this type conformed to Biddison's experience (R. 189-190). The testimony on going value was an estimate, $120,000 (R. 178), set forth in a statement by Greene (R. 176-179), and supported by Biddison (R. 190-191). The going value estimate was based upon the well-established character of appellant's natural gas busi-

[33]Over 6000 test holes were dug on the distribution system alone, as this inventory was prepared from field work, not office records (R. 145-146). Transmission lines were inspected at test holes dug at each mile post (R. 148-149).

ness in Laredo, the favorable ratio of gas consumers to total population and to consumers of other forms of utility service in that City, and upon the efficiency of appellant's operations at Laredo. This state of business development at Laredo was compared with actual experience in building and developing a number of similar properties (R. 176-179).

On the other hand, the witness Elrod, whose testimony was apparently followed by the Commission and whose valuation was unhesitatingly accepted by the Court of Civil Appeals, had never had anything to do with the design, or construction, or operation of a natural gas property (R. 208, 296). He had not gone into the operation of appellant's properties serving natural gas in Laredo (R. 320). He had never bought any gas pipe or fittings (R. 296). At the Commission hearing, he did not know what kind of trucks were used on cross-country pipe line work (R. 1276). In his appraisal he used spot prices for materials, taking all quantity discounts, with the delivered cost of materials figured at carload freight rates, even for small fittings (R. 311-312). His costs of installation contemplated all economies to be obtained by modern machinery (R. 310-313). However, Elrod used only one-half the engineering and supervision expense which he admitted would be incurred in present reconstruction. Compare "Engineering & Supervision, 2-1/2%" (R. 207, 299, 330) with Elrod's testimony (R. 303, 305). His general construction costs were an arbitrary 10 per cent. That 10 per cent was arbitrarily divided between the usual general construction cost classifications of expense. But Elrod had made no analysis of the functions causing those

costs, or of similar costs incurred in gas construction work (R. 306).

Elrod could find no going value when before the Railroad Commission (R. 214). When before the Court he testified he had included going value (R. 302), but not separately (R. 303). Yet he could not say whether the amount he had included was as much as 50 cents (R. 325-326).

Elrod said he had given effect to inspection in his deductions to show cost new less depreciation (R. 309-310). He could not point to one instance where inspection has changed his deductions on a straight-line age-life basis (R. 309-310; 313-316). Starting with the known or assumed date when a pipe line was first laid between two points, Elrod's straight-line depreciation deductions proceeded inexorably at the same annual percentages. It never occurred to him that loss in value from depreciation was arrested by maintenance or reconditioning,[34] or overcome by replacements[35] (R. 307-310; 315-317).

Elrod included the pipe line to the Jennings Field in his 1932 appraisal (R. 316), but excluded it from his

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[34]The term "reconditioning" means that a line running through a "hot spot," or corrosive soil area, is stripped of its earth cover, lifted, joints badly pitted by corrosion culled out and replaced, the remaining joints sand-blasted, primed, coated and relaid (R. 315). As the name implies, "hot spots" are limited in size (R. 128, 1278). Hot spots occur at certain points within a hot spot area. For example, when the reconditioning was done on the Pescadito-Jennings line in 1933, the work covered some 40,000 feet of that line (R. 682), but total replacements consisted of 11,000 feet of pipe (R. 704).

[35]In making his first appraisal (R. 203-208), Elrod applied an arbitrary per cent condition to certain distribution mains, such as 45 per cent for black pipe, 72 per cent for painted pipe,

appraisal for 1933 (R. 298-300; 329-330). Elrod testified that the line was built to serve Laredo and was serving Laredo when he last saw it (R. 316). He admitted that the need for reconditioning this line was confined to that section between mile posts 27 and 30 (R. 316-318; see R. 360). So, never having operated a gas company (R. 296) and never having gone into the operations of this one (R. 320), Elrod put his exclusion of the line on his feelings in the matter and his judgment as an engineer (R. 302).

Appellant has done all that it can to get an independent judicial review on the question of value and cannot get it. Compare *Oklahoma Natural Gas Co. v. Russell*, 261 U. S. 290, 293. The proof was not such that it could not conceivably establish the unreasonableness of the Commission's valuation. *Nashville, Chattanooga & St. Louis R'y v. Walters*, 294 U. S. 405, 415-416. The testimony was competent, and the refusal of the state courts to consider the proof amounts to a denial of a hearing on the issue. *Georgia Railway & Electric Co. v. Decatur*, 295 U. S. 165, 171.

The trial court permitted the introduction of sharply conflicting testimony as to property value, but refused to allow the conflicts to be resolved by findings of fact (R. 372-387). The Court of Civil Appeals relieved itself of the duty of examining the evidence with respect to value by treating the matter as presenting nothing

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[35]—*Continued*—
85 per cent for enameled and wrapped pipe. He used 67 per cent for transmission lines where sections had been reconditioned (R. 313, 316). But when he made his second appraisal as of December, 1933, he made further deductions for depreciation on a straight-line age-life basis (R. 313-316).

but a question of practice (R. 414). This despite the fact that the deprivation of constitutional rights occasioned thereby was specifically raised in each of the assignments summarily dismissed as involving mere matters of practice (R. 406-410), and was again called to the Court's attention in appellant's motion for rehearing (R. 440-441, 448-453).

Appellant has not only been denied an independent judicial review by the state courts on this basic issue, it has been denied any review whatever. This action is contrary to all the decisions of this Court. *St. Joseph Stock Yards Company v. United States,* 298 U. S. 38, 49-54.

No finding of fact was made by any of the courts below with respect to the fair value of appellant's properties. The Court of Civil Appeals did use the figure $700,000 in its computations, but its only finding with respect to this figure was not that $700,000 was fair but that it was the lowest appraisal in the record (R. 422). "The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and *have judicial findings based upon it.*" *Baltimore & Ohio R. Co. v. United States,* 298 U. S. 349, 368-369. The courts below having refused to review the evidence and to make judicial findings from it, the necessary result is that the State of Texas has failed to provide appellant that adequate judicial hearing as to confiscation required by the Federal Constitution. *Ohio Valley Water Company v. Ben Avon Borough,* 253 U. S. 287, 289.

The error was harmful, although the hurt is simply a

matter of degree. The 55 cent rate is so flagrantly unjust that confiscation has been demonstrated from this record upon the Commission's own findings by evidence undisputed and indisputable by appellees. Despite the fact that appellant's showing of confiscation is not dependent upon the claim that the Commission's valuation was inadequate, it is respectfully submitted that the error is of such nature that this Court should correct it. This is all the more important because, under the Johnson Act [Subd. (1), sec. 41, Title 28, U. S. C., as amended May 14, 1934], confiscation cases now will ordinarily first be tried out in the courts of the States. Unless these courts are required by this Court to accept and follow the standards of procedure heretofore established, this Court will be without a record appropriate for determining the rights of the parties in rate cases, and those rights will be gravely impaired.

IV.

The Retroactive Refund Provision of The Commission's Order Was Upheld Without Finding the Facts Essential to Determine the Effect Upon Appellant's Constitutional Rights.[35]

It will be recalled that the trial court held the retroactive refund provision of the order invalid and that its judgment enforced the order only from April 24, 1934 (R. 389-391); recovery of refunds from January 1, 1932, being denied. Appellees appealed from this part of the judgment. In respect to this cross appeal, the Court of

[35] Assignment 11 (R. 512, 1410).

Civil Appeals held, as a matter of abstract law, that the state statute (Art. 6058, Appendix p. 82) was to be construed so as to give the Railroad Commission power to make the 55 cent rate effective by refunds from the date of the 40 cent rate ordinance.[37] Having determined the abstract *existence* of the power, the Court, without the slightest consideration of the effect of the *exercise* of such power, proceeded to reform the judgment below as to require refunds to be made on all collections subsequent to January 1, 1932. No finding was made with respect to the fair value of appellant's property at any time, much less a finding as to each of the years involved. *Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133, 162. See also *Columbus Gas & Fuel Co. v. Columbus*, 55 Fed. (2d) 56, 57, and compare *Lindheimer v. Illinois Bell Tel. Co.*, 292 U. S. 151, and the findings in the lower court, 3 F. Supp. 595, 596-600. As to the effect of the 55 cent rate, the Court's finding with respect to 1933 was in direct conflict with all the evidence, and no finding was made with respect to 1932.[38]

Not only did the Court enter its judgment without the necessary findings, but entered it in direct conflict with the undisputed proof so far as 1932 and 1933 were con-

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[37]This was the ordinance effective January 1, 1932, from which appellant first appealed to the Commission, and which was suspended and finally set aside as unreasonable by the Commission (R. 427).

[38]The undisputed proof showed that if the refunds were made, appellant would be deprived of just compensation for the use of its property for 1932 and 1933, even if the Commission's own findings be ignored, and the most favorable figures in the record used. These figures show that after making the refunds, appellant would be left with a return of 1-7/10 per cent in 1932 and of 2-8/10 per cent in 1933. See tabulations in II, *supra*, pp. 36-37.

cerned and without any proof at all with respect to the period intervening between the trial (March, 1934) and October 30, 1935, the date of the appellate court's judgment (R. 389, 428). Compare *Central Kentucky Co. v. Commission*, 290 U. S. 264, 273-275.

Before a public service company may be constitutionally required to give up its prior collections, it must appear that after so doing there will remain, with respect to the period involved, sufficient sums to constitute just compensation for the use of the property which rendered the service. *Baltimore & Ohio R. Co. v. United States*, 298 U. S. 349, 373. The essentials of a fair hearing are denied when there is a refusal to consider the effect on past years of making lower rates apply through refund of portions of the receipts for service in those years. *West Ohio Gas Co. v. Commission* (No. 2), 294 U. S. 79, 81-82.

If the judgment of the Court of Civil Appeals stands, appellant is without remedy under the state law. The Railroad Commission loses jurisdiction of the subject matter of its order while the validity of that order is in litigation, and the Commission is not empowered to relieve from the effect of its order as to past transactions. The only way the Commission's action can be undone is to set the order aside.[39]

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[39] While the validity of its order is in litigation, the Railroad Commission loses jurisdiction over the subject-matter of the order. *Stewart v. Smith*, 126 Tex. 292, 295. See also the following decisions (none officially reported): *Edgar v. Stanolind Oil & Gas Co.*, 90 S. W. (2d) 656, 657; *Barnsdall Oil Co. v. Railroad Commission*, 90 S. W. (2d) 663, 664; *Railroad Commission v. North Texas Coach Co.*, 92 S. W. (2d) 268, 270; *Stanolind Oil & Gas Co. v. Railroad Commission*, 92 S. W. (2d) 1057, 1059; *McNeny v. Railroad Commission*, 96 S. W. (2d) 96, 99; *Smith v.*

V.

The Holding That The Evidence Was Insufficient As A Matter of Law to Show Confiscation—In So Far As the Holding Was Upon Evidence—Was Based Upon Consideration of Only Certain Testimony Offered By Appellees.[40]

The Court of Civil Appeals held that, as a matter of law, "the evidence of appellant did not show • • • that the lower 55c rate" would result in confiscation. This statement concludes the paragraph on page 425 of the record in which the Court purports to discuss the evidence with respect to confiscation. The only other portion of the opinion in which the Court discusses such evidence is the paragraph beginning on page 422 of the record. Neither of these paragraphs contain the remotest reference to appellant's evidence nor does the opinion at any place give consideration to the affirmative and undisputed proof that the 55 cent rate was confiscatory in its actual operation. Instead the Court took only two portions of appellees' evidence to reach the conclusion that *appellant's wholly unconsidered evidence*

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[39]—*Continued*—
Wald Transfer & Storage Co., 97 S. W. (2d) 991, 996. This on the theory that the Commission and a court cannot have concurrent jurisdiction over the same subject-matter. The Commission is without power to relieve from the effect of its order in respect to past transactions, but can only extend relief prospectively. *Houston Chamber of Commerce v. Railroad Commission* (not officially reported), 19 S. W. (2d) 583, 588, affirmed on other grounds, 124 Tex. 375. When an order of the Railroad Commission is set aside by a court, the controversy goes back to the Commission to make a new order. *Railroad Commission v. Uvalde Construction Co.* (not officially reported), 49 S. W. (2d) 1113, 1114.

[40]Assignment 5 (R. 511, 1408).

failed, as a matter of law, to show confiscation. One of these two portions of appellees' evidence was with respect to the average annual revenues at the 75 cent rate for the four year period used by the Commission and for the five year period covered by appellees' testimony at the trial. The second portion of appellees' evidence was Elrod's appraisal of about $700,000, characterized by the Court as the "lowest valuation shown by the evidence" (R. 425). With this $700,000 figure as the basis, the Court then made certain calculations purporting to show that large returns had been made at the 75 cent rate in prior years.

Testing the legal sufficiency of appellant's evidence as to confiscation, not by a consideration of *that* evidence but only by use of certain of *appellees'* evidence, was justified by the Court of Civil Appeals through its application of a formula constructed out of certain words used in four decisions of the Federal Courts.

Turning to the paragraph of the opinion beginning on page 421 of the record, the statement is found that "The rule is settled that rates are not based upon the results of business of any one year alone, * * *." That sentence, and the next sentence ending "a test of five years or more next preceding the inquiry, if available, is selected" (R. 421), are taken from *Denver Union Stock Yard Co. v. United States*, 57 F. (2d) 735, 752-753. The next sentence is from *St. Joseph Stock Yards Co. v. United States*, 11 F. Supp. 322, 325, last paragraph under syllabus 4. The words "resolve all doubts against the complaining party; pare down valuations unsparingly" (R. 421) are from the opinion of this Court in *Newton v. Consolidated Gas Co.*, 258 U.

S. 165, 174, quoting from the opinion of Judge Learned Hand, 267 Fed. 231, last paragraph page 261 and last paragraph page 269. The next sentence (R. 421-422), in which the Court of Civil Appeals points out that the due process and equal protection clauses of the Federal Constitution do not assure the utility the right to a return on its property under all conditions and circumstances, is from *Public Service Commission v. Great Northern Utilities Co.*, 289 U. S. 130, 135; and in the final sentence (R. 422), the Court returns to the opinion of the lower court in the *St. Joseph Stock Yards case*, 11 F. Supp. at page 325.

From these selected passages the Court of Civil Appeals concluded that the only "real criterion or guide" by which a rate can be shown confiscatory is to test that rate, and that since a five year period is often used by rate making bodies to *forecast* a new rate, a test for five years, or at least for a period of years long enough to determine matters of doubt and uncertainty, is required to *demonstrate confiscation* (R. 421). The Court then concludes that if a utility refuses to accept the lower rate, it is the duty of the Court to decide confiscation by paring down valuations unsparingly and resolving all doubts against the complaining party.

As the Court applied the formula in this case, it means that a public utility must for several years, probably five, give up its constitutional rights before it is entitled to protect them. Certainly more than two years undisputed confiscation on the Commission's own findings must be shown, since such confiscation for that period was shown in this record and rejected by the Court as insufficient. If it be urged that this proof was inconclu-

sive because resulting from the mathematical application of the 55 cent rate to the sales of the company at a time when the 75 cent rate was actually being charged, the answer is that any other kind of proof was impossible under the circumstances of this case. The 40 cent rate fixed by the city council was suspended by the appeal to the Railroad Commission and was found by the Commission to be unreasonable and the 55 cent rate substituted. From January 1, 1932 (the effective date of the order), until June 13, 1933 (the date of entry of the order), the 55 cent rate was not in existence to be put to a test. After the Commission's order was entered, appellees filed this suit to enforce the order and themselves caused the order to be suspended by the state court (R. 7, 26). Thus at all times, except during the short period between the date of the Commission's order and the date of filing of this suit, there had either been no 55 cent rate, or that rate had been suspended by appellees' own action. To require proof impossible of production as a condition to the judicial protection of property rights is not due process. Compare *International Harvester Co. v. Kentucky*, 234 U. S. 216, 223.

The gravity of the Court's error, however, is not fully appreciated without considering how the Court "pared down values unsparingly" and "resolved all doubts against the complaining party."[41] The former was accomplished by the simple expedient of accepting the

[41] This discussion is intended to show the cumulative effect of the error. The particular applications of the formula in respect to property value (VI, *infra*, pp. 55-59) revenues (VII, *infra*, pp. 60-64), and the requirement of proof based on a test of the 55 cent rate (VIII, *infra*, pp. 64-74) are considered separately in the next succeeding sections.

lowest over-all appraisal found in the record and the latter by not permitting appellant's evidence to raise any doubts to be resolved. Thus "paring down values unsparingly" meant unquestioning acceptance of the lowest testimony as to over-all value offered by those seeking to enforce the rate in question, without any analysis of the data supporting the over-all figure, and without reference to any conflicting testimony, no matter how cogent. "Resolving all doubts against the complaining party" meant, not the resolution of a doubt engendered in the mind of the Court after weighing the evidence, but refusal even to consider the evidence relied on by appellant and complete acceptance of such of appellees' testimony as gave the outward appearance of supporting the order. The Court of Civil Appeals has thereby made itself one not merely "bound by the findings of the implicated board for which there is any evidence, always easily produced," but one bound by any testimony offered on behalf of the members of such board as plaintiffs in a law suit, even though the testimony was in direct conflict with the basic legislative findings of those officials.[42] The hearing accorded appellant in a court so bound does not meet the fundamental requirements of due process. *Chicago, Burlington & Quincy R. R. v. Osborne,* 265 U. S. 14, 16-17.

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[42]If the Court of Civil Appeals had made a proper examination of the record, it would have discovered that even after paring down the value of appellant's property unsparingly to $700,000 and after resolving all doubts against appellant by using the lowest depreciation reserve figure in the record, the 55 cent rate would have produced a return of only 1-7/10 per cent for appellant's gas service rendered in 1932, and of only 2-8/10 per cent for such service rendered during 1933. See tabulations, II, *supra,* pp. 36-37.

VI.

The Lowest Appraisal Estimate To Be Found In The Record Was Used As The Basis For Such Calculations of Return As Were Made In The State Appellate Court.[43]

To support its conclusion that the evidence, as a matter of law, failed to show confiscation, the Court of Civil Appeals calculated return on the basis of $700,000, which was an approximation of the 1933 appraisal by Elrod (R. 330). The Court's selection of this figure was through the purely mechanical process of scanning the record for the lowest over-all figure given at the trial by any witness on property value, without even a passing reference to the qualifications of that witness or to the strength or weakness of the reasoning by which he supported his opinion.[44] Thus the 55 cent rate was held non-confiscatory on a property value which was $185,000, or more than 20 per cent, lower than the Commission's legislative finding of value on which the rate was based. The result was to deny determination of appellant's claim that, because $885,000 was wholly inadequate, the 55 cent rate was confiscatory to an even greater degree than appeared when the Commission's valuation was used. This was fundamental error (*St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 49-54), and even more "rough and ready" than that condemned in *West v. Chesapeake & Potomac Tel. Co.*, 295 U. S. 662, 679. In the case last named the District Court at least reached its conclusion as to value after it had considered, an-

[43] Assignment 9 (R. 512, 1409).

[44] See analysis of Elrod's testimony, III, *supra*, pp. 43-45.

alyzed and passed upon *all* the evidence on that issue. 7 F. Supp. 214, 218-234. In this case the Court of Civil Appeals simply used "the lowest valuation shown by the evidence (about $700,000)" (R. 425), a procedure which required it to do nothing more than make a comparison of the over-all totals given by the valuation witnesses, and to exercise its judgment only to the extent of selecting the lowest figure.

It will not do to say that the Court of Civil Appeals used $700,000 because the Commission's valuation included the pipeline to the Jennings field. The Court announced as the rule for determining the constitutional question of confiscation where raised in respect to a new untried rate that "the court on appeal must * * * pare down valuations unsparingly" (R. 421). It repeated that rule on page 422 and again on page 425 of the record, and each time the paring was down to $700,000, as the lowest valuation shown by the evidence. The Court characterized the $885,000 valuation as extremely liberal,[45] because it included the Jennings line (R. 422), but that was a mere surmise. The Commission refused to reveal how its $885,000 valuation was made (R. 235),

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[45]Obviously, a total sum consisting of a number of sub-totals cannot be characterized, unless each sub-total is known. The statements in the opinion that $885,000 included two pipe lines "at a valuation of more than $135,000" (R. 422), and that the Jennings line was included at $124,688 and the West Jennings gathering system at $10,342 (R. 414, 419) are based on sources of information outside this record. The probable explanation is the opinion of the Commission, where it is stated that the City's engineer Elrod included these two pieces of property in his appraisal at depreciated costs of $124,668 (R. 16) and $10,342 (R. 15). But neither in their opinion (R. 25) nor in the testimony did the Commissioners reveal *what part* of the $885,000 represented the Jennings line or gathering system.

and gave no testimony which would permit a judicial *finding* of the amount at which any particular piece of property went into the $885,000 lump sum.

The Court of Civil Appeals ignored the distinction between legislative and judicial functions in respect to property valuation for rate purposes. The Railroad Commission's valuation was either made without error of law resulting in confiscation, or it was not. If the former, the Court of Civil Appeals should have struck down the order and left it to the Commission to make a new order, including a new valuation. The opinion contains an emphatic declaration that the Court could only act in a judicial capacity, and could not "exercise the legislative function of rate-making" (R. 424). But in spite of that declaration, the Court consistently ignored the Commission's legislative finding of value, and used $700,000 as the basis of every calculation of return which it made in deciding the case (R. 425).

This action speaks for itself. In *Los Angeles Gas Corp. v. Commission*, 289 U. S. 287, *Dayton Power & Light Co. v. Commission*, 292 U. S. 290, and *West Ohio Gas Co. v. Commission* (*No.* 1) *and* (*No.* 2), 294 U. S. 63 and 79, confiscation was determined upon fair value as found by the rate-making body.[46] The attempt of a District Court to construct a new rate base was condemned, *West v. Chesapeake & Potomac Tel. Co.*, *supra*, pp. 675, 679, as was a like attempt to fix judicially a

[46] It will be remembered that in the *West Ohio cases*, the Commission valuations were at predepression levels, and that in the *Dayton case*, there was found to be a substantial excess in the base for the questioned rates on account of the Commission's valuation of gas leases.

new tax base, *Rowley v. Chicago & Northwestern R'y*, 293 U. S. 102, 111-112.

Furthermore, when rate making officials fix fair value, base a rate on that value, bring suit almost immediately to enforce that rate, expressly declaring in that suit upon the rate order of which the fair value finding is a part, such officials ought to be bound by the value they have fixed and declared upon. To assert otherwise is to say that the appellees may procure the undoing in judicial chambers of what they had very recently done in the Commission hearing room. In *St. Joseph Stock Yards Co. v. United States*, 58 F. (2d) 290, 297-298, three judges held the Secretary of Agriculture bound by his valuation, saying:

> "This conclusion indeed assumes that the valuation found by the Secretary is still a fair valuation of petitioner's property. But it is proper that that assumption be made. The rates for services ordered by the Secretary are predicated upon that assumption. Without it the order is invalid as having no foundation. * * * The valuation fixed is the only valuation in the case, and it cannot be questioned and at the same time affirmed."

If the decision below is upheld, judicial intervention to prevent confiscation is at an end in Texas. In any suit of this kind, a witness can usually be found to express the opinion that even the Commission's valuation is substantially in excess of the real worth of the utility's property. This type of opinion testimony has been characterized as "always easily produced," *Chicago, Burlington & Quincy R. R. Co. v. Osborne*, 265 U. S. 16-17, yet, under the law of Texas as established in the decision below, such testimony is binding on the court.

This despite the fact that this Court has held such testimony not to be binding and, at times, not even persuasive. *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 18; *Dayton Power & Light Co. v. Commission*, 292 U. S. 299. Under the Texas rule, as applied below, only in the event of complete default by the state officials could the order be set aside. Appellees' sole witness as to valuation was a consulting engineer, with no official connections, employed to make an appraisal and testify in this case (R. 297). The Court of Civil Appeals adopted the estimate of this engineer, and in so doing made his opinion conclusive, not only against the Commission's legislative finding of present fair value, but against all other valuation testimony of every kind offered at the trial.[47] So conclusive, indeed, was the opinion expressed by this one witness that the Court of Civil Appeals held it would have been improper to have asked the jury to resolve the conflict between his opinion, the opinion of appellant's experienced witnesses, and the finding made by the Commission itself (R. 414, 424). This cannot be due process.

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[47]To make the testimony of one witness conclusive and indisputable is so entirely foreign to our system that Wigmore summarily dismisses the possibility of its occurrence, remarking that such action on the part of a court would be a refusal to exercise the judicial function and that no one ever thought of suggesting a rule of conclusive preference for any testimony except certain written governmental records. *Wigmore on Evidence*, 2nd ed., sec. 1348; *Wigmore Code of Evidence*, 2nd ed., Rule 146, par. (b), sec. 1304.

VII.

Controlling Weight Was Given To Revenues of Four Prior Years At The 75 Cent Rate In Deciding That The Evidence Was Insufficient to Show That The 55 Cent Rate Was Confiscatory.[48]

The second part of appellees' testimony used by the Court in deciding appellant's evidence legally insufficient to raise even an issue of confiscation related to the company's alleged average revenues for certain years and these average revenue figures were given controlling effect against appellant's undisputed and unconsidered evidence with respect to the actual effect of the order for the two full years prior to the time of the trial. The argument of the court was that since "it was shown that under the existing rate appellant has received an average annual return, even through several depression years, of about 11 per cent on the value of its property used in the public service," the evidence of appellant manifestly "did not show, as a matter of law, that the lower 55c rate" would be confiscatory (R. 425). Not only was the use of any average revenue figures wholly unwarranted under the circumstances of this case, but the use actually made of them by the Court is without parallel in the decisions.

It is not disputed that average revenues are useful where *prediction* is necessary. In this case the event which was the subject of the prediction had occurred and the data which formed the basis for the prediction had lost their relevancy. The action of the Court below in using these averages was "to prefer the forecast

[48]Assignment 7 (R. 511, 1408).

to the survey" and "is an arbitrary judgment," such as was condemned in *West Ohio Gas Co. v. Commission (No. 2)*, *supra*, page 82.

The character of the averages used and the use made of them throws into bold relief the harmfulness of the error and the controlling effect it had upon the decision. The particular calculations used by the Court as a basis for its ultimate holding appear on page 425 of the record but refer back to the tabulation appearing on pages 418 and 419. This tabulation purports to show net amounts available for return, at existing rates and before provision for depreciation, for five selected twelve month periods (R. 418) and four different combinations of these twelve month periods (R. 419). First it may be noted that the table on page 418 shows large deductions for "questioned items of operating expenses," which of course by the same amounts increased the sum shown as available for return. These deductions were made without competent supporting evidence.[49] Next it is to be observed that the calendar year 1932 (the first

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[49]These items were listed in a table at the back of plaintiffs' exhibit 8 prepared by their accountant witness Lewis (R. 253 *et seq.*). This exhibit was admitted over appellant's objection (R. 252). The major part of these expenses were those as to which Lewis had only examined vouchers, and which he had not attempted to verify from the accounts of original entry (R. 219-224). The remainder, such as uncollectible accounts (R. 221) he thought were items subject to "some controversy in a rate controversy" (R. 272). He testified that there was no doubt that the amounts were actually paid by appellant (R. 221) and when he was recalled by appellees to testify as to the "net return before provision for depreciation and income tax" for the four fiscal years and 1933 (plaintiffs' exhibit 8, R. 253) after deducting non-recurring power plant and refinery revenues and gas purchase expense, he included them in his figures (R. 291, 881-882).

year to which the order applied) is entirely omitted although the fiscal year ending July 31, 1932, is included. It may then be noted that the last two twelve months periods shown on the table on page 418 include one year and seven months of the period during which the Court below has said that refunds of the difference between the 75 cent rate and the 55 cent rate must be made, yet the revenues shown as available for return are *at the 75 cent rate.* The averages used are unweighted, mathematical averages. Finally, and most extraordinary of all, the calculations purporting to show the average annual rate of return on page 419 assume that appellant's property had the same value throughout a period of time covering two entirely different economic eras.[50] This in the teeth of an express declaration by the Commission that the testimony upon which it found the $885,000 valuation was at depression prices (R. 197).

From this wholly misleading and erroneous tabulation (R. 419), the Court of Civil Appeals selected the average revenue calculations of two periods as conclusive proof that appellant's property was not being confiscated in 1932 and 1933 (R. 425). The Court first declared "that the average net revenue for the five year period used in the trial court, less annual depreciation of 3% on the $885,000 valuation of appellant's property, would yield an average anual return of 8.46%." In this calculation the product of the 75 cent rate during the four fiscal years had a weight of four, the product of the 75 cent rate in the calendar year 1933 a weight of one. Bearing in mind that the calendar year 1933

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[50] *Atchison, Topeka & Santa Fe Ry. Co. v. United States,* 284 U. S. 248, 261.

was the second full year to which the order applied, this calculation is the equivalent of saying that what you earned for four prior fiscal years is proof of your 1933 earnings four times as cogent as proof of what they actually were. In addition, the calculated average included large amounts of revenue which the Court has said appellant could not keep, but must return to its customers. Not satisfied with this, the Court then applied the calculated revenue average to its lowest appraisal figure of $700,000, and found appellant to have received an average annual return for the five year period of more than 10 per cent.

The second calculation of the Court was "that if the average net revenues for the four year period used in the hearing before the Commission are utilized, such revenues, less 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 9.47%" (R. 425). The Court then, as in the first calculation, used the $700,000 lowest appraisal and found an average return of more than 11 per cent during this four year period. This calculation gave the product of the 75 cent rate during the four fiscal years a weight of infinity. Bearing in mind that the issue as to confiscation was with respect to returns in 1932 and thereafter, the use of this average to decide that issue was equivalent to saying that what your return was in four prior fiscal years is conclusive proof of what your return was in the calendar years 1932 and 1933, and proof of what your actual return was for those years is no proof at all.

Immediately following the second computation the Court says:

> "Thus it was shown that under the existing rate appellant had received an average annual return, even through several depression years, of about 11% on the value of its property used in the public service" (R. 425).

Then, after suggesting that the appellant might receive greater returns under the new rate because of a possible increase in business, the Court immediately concluded that appellant's evidence, as a matter of law, failed to show confiscation. Thus the Court, having first fallen into the error of considering averages at all, was led into the further error of using the revenues received from July 1, 1928, to impose confiscation commencing with the calendar year 1932. This second error was as fatal as the first. *Board of Commissioners v. New York Telephone Co.*, 271 U. S. 23, 31-32; *Newton v. Consolidated Gas Co.*, 258 U. S. 165, 175.

VIII.

Because The New Retroactively Effective Rate Had Not Been Put To An Actual Test, Appellant's Evidence Was Held, As A Matter of Law, Insufficient To Show Confiscation.[51]

While the notion of the Court of Civil Appeals with respect to appellant's "failure" to test the 55 cent rate has been considered briefly, that matter was referred to so often in the opinion that a more extended discussion is deemed to be proper.

In response to the full evidence in the record with respect to appellant's operations and the effect of the

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[51] Assignment 10 (R. 512, 1409).

55 cent rate during the calendar years 1932 and 1933 (the first two years to which the order applied), which evidence clearly showed confiscation of appellant's property during both of those years, the lower court said:

> "An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this Court would not be warranted in holding that the lower rate was either confiscatory, or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate * * *" (R. 422).

Thus undisputed proof of confiscation during the calendar years 1932 and 1933 was completely rejected because appellant had not charged rates which *had no existence during three-fourths of the period in question.*

The so-called "test" cases cited by the Court (R. 422) are clearly inapplicable but since certain language from *St. Joseph Stock Yards Co. v. United States*, 11 F. Supp. 322, affirmed 298 U. S. 38, had a prominent part in the decision below, a short analysis of that case seems fitting.[52] The case involved an order of the Secretary of Agriculture entered in May, 1934, after a hearing concluded in February, 1933 (No. 497, R. 26), fixing rates *prospectively* from June, 1934 (No. 497, R. 6). The stockyards company had had two previous hearings before the Secretary (11 F. Supp. 324), and one by a court of three Federal judges [11 F. Supp. 324, 58 F.

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[52]The record in the *St. Joseph Stock Yards Case* in this Court was No. 497, October Term, 1935, and will be referred to as (No. 497, R. ___).

(2d) 290]. The Secretary's proposed rate schedule and detailed findings (298 U. S. 46; No. 497, R. 24-131) were given to the stock yards company in January, 1934, and the suit was brought in May, 1934, after the Secretary had heard and overruled exceptions and denied a motion to reopen. While the decree was not entered until May, 1935, the stock yards company made no proof of its experience for 1933 and 1934, though it had ample opportunity to do so (298 U. S. 48). It relied on the effect of certain Federal statutes and an *estimate,* not proof, of 1933 earnings (11 F. Supp. 324-325). The effect of the statutes was held speculative and the margin between the *estimate* of 1933 earnings and a reasonable return too small to show confiscation (11 F. Supp. 325). The three judges carefully reviewed every contention made by the stock yards company (11 F. Supp. 328-338; No. 497, R. 910-938), and in spite of the several previous hearings, they exercised independent judicial judgment and made findings of their own or adopted the Secretary's finding after careful analysis of the proof (298 U. S. 54).

The holding that the stock yards company ought to test the Secretary's rates was predicated upon the existence of a number of facts wholly absent here—the company had had three prior hearings; the company had failed to make proof of its actual operations during the two years intervening between the closing of the record before the Secretary and the decree; even on the company's *estimate* of 1933 earnings the margin of alleged confiscation was narrow; the rates fixed were prospective, and speedy and adequate remedies were

open to the company in the event the Secretary's predictions were wrong.[53]

In addition to these differentiating factors, the Secretary had made complete and detailed findings (No. 497, R. 24-131). In this case, the Commission did little more than discuss the matters as to which the testimony was conflicting, make a lump sum finding of fair value (R. 25), a general finding for depreciation reserve accrual (R. 21), substituted for certain expenses what was called "reasonable compensation" without saying what such reasonable compensation was (R. 24), and made no finding that the existing 75 cent rate was unjust or unreasonable (R. 9-26). Compare *Wichita Railroad & Light Co. v. Commission,* 260 U. S. 48, 58-59; *Mahler v. Eby,* 264 U. S. 32, 44-45; *Pacific States Co. v. White,* 296 U. S. 176, 186. The Secretary's rate base was at normal values, carefully avoiding depression prices, and as a basis for his prediction, he examined a six year prior period and derived rate factors from this study, not from mathematical averages. (298 U. S. 48, 71). The Commission here fixed its valuation at depression prices (R. 197), and adopted a straight mathematical average of four prior fiscal years as a basis for its prediction as to future earnings (R. 22). In the *Stock Yards Co. Case,* there were no peculiar conditions affecting the company's revenues different from conditions affecting business generally. In the present case appellant, about the time the 55 cent rate was made effective, had permanently lost revenues from

[53]See U. S. C., Title 7, Sec. 207(e), providing that any rate schedule filed shall not be suspended more than sixty days. See also Sec. 217 of the same Title and Sections 46 and 47 of Title 28 providing for injunctive relief.

two sources which had been averaging approximately $58,000 a year (R. 88C), which revenues, while they were not the product of the domestic rate, were credited by the Commission in determining appellant's over-all rate of return.

Under these circumstances the rulings in the *St. Joseph Stock Yards Case* can plainly have no application. On the other hand, this record requires the application of the rule that when existing rates are confiscatory, there can be no occasion for testing lower rates. *Northern Pacific Ry. Co. v. Department of Public Works,* 268 U. S. 39, 45. And it may here be noted that appellant has not followed a course of conduct which casts doubt upon its contentions. Compare *Lindheimer v. Illinois Bell Tel. Co.,* 292 U. S. 151, 160-164; *Dayton Power & Light Co. v. Commission,* 292 U. S. 290, 311, 312. Prior to January 1, 1932 (the effective date of the order), appellant petitioned the City of Laredo for an increase in the 75 cent rate, which it claimed to be confiscatory, and promptly appealed from the refusal to grant the increase (R. 10, 11, 26). Using the Commission's valuation and depreciation reserve accrual and taking only undisputed evidence or that most favorable to the order, the 75 cent rate yielded only 3-6/10 per cent return in 1932 (R. 94A) and 4-4/10 per cent in 1933.[54] Such a return is clearly confiscatory

[54]

1933	
At the 75 cent rate.	
Net revenues before depreciation or income tax, plaintiff's exhibit 8 (R. 253)	$65,524.16
3 per cent of $885,000 for depreciation reserve	26,550.00
Net return	$38,974.16
	or 4-4/10 per cent of $885,000

of a property situated as appellant's is, and which the Commission has said is entitled to a net return of 7 per cent.

The remarks of the Court below with respect to a possible greater return under the lowered rate because of an increase in appellant's business is but another example of the Court's failure to follow the rules announced by this Court (R. 422, 425). This sort of "guess work" has recently been condemned by this Court [*West Ohio Gas Co. v. Commission* (*No.* 2), 294 U. S. 79, 82, 83] and appellees made no effort to follow the method of proof of such matters suggested in that case.[55]

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[55]See testimony of Walker (R. 948), Hausman (R. 962, 968), Scales (R. 971-972), and Irwin (R. 975). None of these citizens had any experience in the natural gas business, nor had they made any survey or special study of the question. Fowler, consulting engineer, had experience in the construction of natural gas properties but simply expressed a general opinion (R. 1089, 1093). Montgomery, a teacher of economics at the University of Texas, had made no special study of the natural gas business, and had never been in Laredo except in passing through on his way to somewhere else (R. 1045-1046, 1048). He testified that, in his opinion, a lower price for gas would increase its use and that the same thing would be true of "any economic good" (R. 1050-1051). Martin, Mayor and former alderman of Laredo (R. 331), expressed the opinion that a lower price for gas in Laredo would increase use by existing customers (R. 332). However, this witness also testified that in his opinion the gas bills of existing customers would be about 20 per cent less under the 55 cent rate than under the 75 cent rate. As 20 per cent was approximately the margin of difference between the two rates, Martin's opinions were contradictory (R. 334-335). Martin also thought that appellant would gain from 1200 to 1500 new gas consumers, if it charged the 55 cent rate (R. 332, 336). The population of Laredo is about 70 to 80 per cent Mexican extraction (R. 978). This population has a lower standard of living than the average citizen of Anglo-Saxon descent (R. 953). On cross examination Martin estimated that about 700 of the additional customers would be obtained in a section of Laredo where the population was largely

The guesses of appellees' witnesses were met with proof of appellant's service to the territory for almost a quarter of a century (R. 11-12), and by proof that, despite the mild climate, appellant's service was more widely used than that of any other utility in Laredo.[56] Appellant also proved, through witnesses experienced in the gas business, that a reduction of the rate to 55 cents would not appreciably increase the use of gas.[57] The

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[55]—*Continued*—
Mexican, where there were 25 to 30 houses to the 330 foot block, which Martin described as the area between Arroyo Zacate and Santa Maria Avenues and between Bruni Street and the Tex-Mex Railroad tracks, and that the remainder would come from another similar area known as Colone Hidalgo, with some from the area west of Santa Eduardo Avenue and south of Iturbide Street (R. 336-337). Martin testified that the inhabitants of this area, at the 55 cent rate, would use gas for a small space heater and cooking appliance, each costing from $3.50 to $4.50, and would have one or two gas jets for light (R. 337-338).

[56]In the past twenty years practically every residence in Laredo had been built and equipped for the use of no fuel except natural gas (R. 123). There were approximately 10 electric cooking ranges, one electric water heater, very few electric space heaters and about 3 commercial installations using fuel other than gas in Laredo (R. 123-124). The following figures show the comparative use made of the respective utility services in Laredo (R. 424):

CUSTOMERS

	Gas	Electric	Water	Telephone
As of Jan. 1, 1933	4790	3162	4361	2742
As of Jan. 1, 1934	4775	3087	4227	2769
Increase or Decrease	15 decrease	75 decrease	134 decrease	37 increase
Percentage of increase or decrease	1/3 of 1 Per cent decrease	Over 2 per cent decrease	About 3 per cent decrease	About 1-1/2 per cent increase

[57]See testimony of Stein, appellant's district manager at Laredo, who had lived in Laredo and engaged in the natural gas

testimony of these witnesses was supported by proof of the result of reduction in natural gas rates in other cities similarly situated.[56]

Even if appellees' evidence as to an increase in business because of reduced rates had been definite instead of conjectural, there was still no measure of the supposed increase in gross revenues and there was a fatal omission to give any consideration whatever to the additional cost of serving more consumers. *Chicago, Milwaukee, etc., R'y v. Tompkins,* 176 U. S. 167, 179. See also *Rowland v. Boyle,* 244 U. S. 106, 110; *Prendergast v. New York Tel. Co.,* 262 U. S. 43, 51; *Brooklyn Union Gas Co. v. Nixon,* 2 F. (2d) 118.

The short answer to appellees' contention here is, of course, the retroactive effect of the order. All of 1932 and half of 1933 had passed when the order was entered and even a refund of appellant's entire charge could not increase the business already done. As was aptly said by the Supreme Court of Wisconsin in *Wisconsin-Minnesota Light & Power Co. v. Commission,* 183 Wis. 104,

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[56]—*Continued*—
business since 1910 (R. 113, 124-125); and of Strange, appellant's vice president in charge of distribution operation, with twenty-eight years of experience in the public utility business, electric, manufactured and natural gas (R. 338-339). Strange testified, giving specific figures, that the inhabitants of the areas from which Martin said the additional customers would come—using gas for the purposes and with the appliances to which Martin had testified—would save a total of about 75 cents a year if the rate were 55 cents instead of 75 cents (R. 343-345).

[56]Reduction in gas rates in Amarillo, Texas, in 1931 by 24.52 per cent reduced revenues by 23.34 per cent (R. 339-343). Studies in other cities situated in the same general part of Texas as Laredo showed that variation in domestic gas rates from 50c to $1 per 1000 cubic feet had no appreciable effect on consumption (R. 342).

105-106, a case where the lower rates were to apply in a past period:

> "In setting aside the existing rate the Commission cannot substitute for the experience of the company its estimates as to future revenues and operating costs. The net earnings of the company for the year ending October 31, 1921, was a completed operation. Estimates as to revenues could not change the fact as it existed."

Furthermore, as emphasizing the inapplicability of the so-called "test" cases, it is to be remembered that in this case confiscation appeared on the face of the record before the Court of Civil Appeals by definite, certain, indisputable facts. This showing did not depend upon "whether the evidence requires the conclusion that by reason of the inadequacy of the valuation the result is confiscation," *Los Angeles Gas Corp. v. Commission,* 289 U. S. 287, 315-316, nor upon whether such conclusion was required from the rate of depreciation reserve accrual or the rate of return fixed by the Commission. *United Railways v. West,* 280 U. S. 234, 249-254. Nor was confiscation to be found only upon "elaborate estimates and computations" inconsistent with appellant's experience, or only by sustaining amounts it charged to operating expenses for depreciation, *Lindheimer v. Illinois Bell Tel. Co., supra,* page 175, or upon upholding, through the testimony of friendly experts, the city gate price charged for gas by an affiliated company, *Dayton Power & Light Co. v. Commission,* 292 U. S. 290, 295-303. And least of all, did the showing depend upon the effect of national legislation and upon a mere estimate, with accurate proof avail-

able, of 1933 earnings which was what the judges considered "no sufficient showing" for not testing the disputed rates in *St. Joseph Stock Yards Co. v. United States,* 11 F. Supp. at 325.

Finally, a word must be said with respect to the statement that:

> "If actual experience for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may be changed through proper channels" (R. 422).

Here again the Court of Civil Appeals was merely paraphrasing the language of the *St. Joseph Stock Yards Case,*[59] without regard for the fact that the "channels" open to the appellant here and the company there were entirely different. See 7 U. S. C. 207(e), 217; 28 U. S. C. 46, 47. As heretofore mentioned, under the state law the Railroad Commission loses jurisdiction of the subject matter while the validity of its order is in litigation, and is without power to grant relief from the effect of its order as to past transactions.[60] The judgment of the Court of Civil Appeals did not become final until December 30, 1936, when the Supreme Court of Texas denied appellant's motion for rehearing on its application for a writ of error (R. 479). If, when the judgment became final, appellant had yielded to its terms, appellant would have had to make refunds for 1932 and 1933, thereby suffering confiscation shown by undisputed evidence,

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[59] "If actual experience hereafter for a proper period under the rates fixed by the order reveals sufficient reasons, the order can then be challenged through the proper channels." (11 F. Supp. 325).

[60] *Supra,* p. 49, Note 39.

and would have had to make refunds for 1934, 1935, and 1936 without even the opportunity of presenting evidence to any forum of the effect on its earnings of the refunds for those years. The making of these refunds might well wreck the company, yet no "channel" is pointed out by the Court through which relief could be obtained if such were the case. If, however, appellant was able to make the refunds and still remain a going concern, the "channel" for relief from further confiscation would still be far distant. According to the opinion below the experience of the company in its actual operations does not reach the dignity of evidence with respect to the issue of confiscation unless the lower prescribed rate is actually charged for a period sufficient to "determine the matters which are of doubtful or uncertain influence"—perhaps five years or more (R. 421). Because of this ruling appellant could not, at any time in the near future, go back to the Commission with any reasonable hope for an increase in its rates. The Court of Civil Appeals used words from the *St. Joseph Stock Yards* decision, but those words were meaningless, because they did not fit the facts.

IX.

The Court Below Failed To Give Appellant That Independent Consideration of Both The Facts and The Law Which Is Essential to The Proper Judicial Review of a Rate Order Claimed To Be Confiscatory.[61]

From the inception of this controversy until the pres-

[61] Assignment 12 (R. 512, 1410).

ent time appellant has never had any adequate consideration of its rights under the Federal Constitution. Appellant's domestic rates were summarily reduced from 75 cents to 40 cents by the city council of Laredo, and its petition for an increase in existing rates on the ground that they were confiscatory was wholly ignored by the city officials (R. 11). Appealing from both actions, appellant was accorded a hearing before the Commission which resulted in an opinion and order which was so drawn as to conceal and confuse rather than to enlighten and inform (R. 9-25).[62] Appellant's motion for detailed findings as to the principal items of its property was ignored (R. 235), and appellant was left without any means of knowing how the Commission's valuation of $885,000 was reached. Other rate regulatory bodies, where the rights to be determined make a full hearing necessary, as well as the lower federal courts, have been required to make those findings which are essential to inform the parties, as well as the appellate courts, whether rights guaranteed by the Constitu-

[62]For example, the sections of the opinion headed "Distribution System" (R. 16), "Going Concern Value" (R. 17), and "General Overheads" (R. 21) are nothing more than a statement of the opposing contentions of the parties. The West Jennings gathering system and the pipe lines of the Jennings field were said to be included in the $885,000 valuation, but at what amount the Commission did not state (R. 24-25). Because of the inclusion of these items, and in an attempt to apply *Los Angeles Gas Corp. v. Commission*, 289 U. S. 287, *in limine*, no allowance was made for going concern value (R. 25). If the statements of the Commission be taken at face value, this pipe line and gathering system should be excluded and going value included. Because of the inclusion of the Jennings lines the over-all per cent condition of appellant's properties was reduced (R. 19). Operating expenses actually incurred were rejected and a "reasonable allowance" therefor substituted without statement of what that allowance was (R. 24).

tion have been respected.[63] It was the duty of the Commission to enter an order such that the courts and appellant could understand from that order why the Commission had acted as it did, *Norwegian Nitrogen Co. v. United States,* 288 U. S. 294, 319, since appellant's constitutional rights depended upon what the facts were found to be. *Prentis v. Atlantic Coast Line,* 211 U. S. 210, 228.

Thus the matter came before the courts below upon prior legislative proceedings which were fundamentally erroneous. Instead of the errors being corrected by the courts, they have merely been perpetuated and others added to them. After appellees had succeeded in preventing the case from being heard in the federal court on the equity docket, appellant found itself compelled to present all its testimony, including all accounting, engineering and other proof of a technical nature, to a petit jury. Despite the recognized inability of such a

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[63] Cf. *Florida v. United States,* 282 U. S. 194, 215; *United States v. Baltimore & Ohio R. Co.,* 293 U. S. 454, 462-465; *Helvering v. Rankin,* 295 U. S. 123, 131; *Railroad Commission v. Maxcy,* 281 U. S. 82; *Public Service Commission v. Wisconsin Telephone Co.,* 289 U. S. 67, 70; *Public Service Commission v. Northern Indiana Public Service Co.,* 289 U. S. 703. In *Pennsylvania Power & Light Co. v. Public Service Commission,* 193 Atl. 427, 437, the Supreme Court of Pennsylvania said with respect to a statute of that state requiring such findings:

> "This is but a recognition of a fundamental principle that where the Legislature delegates powers to an extrajudicial tribunal appointed to determine property values or rights and the tribunal acts in such matters, it must make such findings that on a review by the court it is possible to determine whether one affected by such determination has been deprived of legal rights."

And see *Federal Equity Rule* 70½ and amendment thereto, 296 U. S. 671.

body to deal adequately with proof of that nature (*Ex parte Young*, 209 U. S. 123, 164), despite appellant's vigorous protests and efforts to extricate itself from this situation (R. 52-53), the trial judge constituted himself a mere umpire in the matter and in the end delegated the answering of all questions of law as well as fact to the jurors by asking them to say whether the reduced rate was "unreasonable and unjust" to appellant (R. 382). If a petit jury has any place at all in a trial like this, it can only be to resolve conflicting issues of fact. However, the trial court refused to permit the jury to be used for this purpose (R. 373-379), preferring to submit to the jury only the ultimate question which he alone was called upon to decide. Upon the jury's pronouncement that the reduced rate was not "unreasonable and unjust," there followed a judgment permanently enjoining appellant from thereafter charging any other rate until the Railroad Commission or other duly constituted authority had changed or modified the rate order (R. 391).

Having been given this opportunity of proof before a tribunal which heard but would not heed,[64] appellant took its case to a tribunal which, in the legal sense, did not even hear. All of appellant's assignments specifically complaining that it had been deprived of its rights under the Federal Constitution by the refusal of the court below to permit findings of fact with respect to value etc., were dismissed from the case as involving

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[64]Cf. *Oregon Railroad & Navigation Co. v. Fairchild*, 224 U. S. 510, 525; *Interstate Commerce Commission v. Louisville & Nashville Railroad*, 227 U. S. 88, 91; *Chicago Junction Case*, 264 U. S. 258, 265.

mere "questions of practice" (R. 414). The appellate court then refused to make any such findings of its own, despite this court's holding that the Federal Constitution assures to appellant not only "the right to introduce evidence" but to "have judicial findings based upon it." *Baltimore & Ohio R. Co. v. United States,* 298 U. S. at 369. Instead, the Court of Civil Appeals simply ignored appellant's evidence, ignored the valuation fixed by the Commission, used only certain portions of the testimony proffered by appellees, treated as conclusive the estimate of one witness as to value, made certain calculations, some erroneous, in the light of which and because of appellant's "failure" to make a test of the new rate which it could not possibly make, the court on appeal reached the conclusion that, as a matter of law, appellant's evidence failed to show confiscation (R. 421-426). The presumption in favor of the validity of the order was thus given irrebuttable effect, since, under the ruling, the presumption could be met only by proof of the result of actually charging the reduced rate, although the rate was not in existence for most of the period in question and therefore could not have been charged. Under this ruling, appellant's evidence with respect to the undervaluation of its property, no matter how cogent and compelling, was held immaterial and on this basic issue all that had any relevancy was the lowest over-all opinion estimate to be found in the record.

Having thus avoided any review whatever of appellant's evidence, the Court proceeded to reverse the action of the trial court and order refunds for the years 1932 and 1933, despite the undisputed evidence that

after making such refunds, the 55 cent rate would leave appellant practically without compensation for the use of its property in those years, and despite the fact that there was no evidence whatever with respect to the effect of the refunds upon appellant's return during 1934 and 1935, during which years this suit was in progress.

Because of the unrevealing character of the Commission's findings and conclusions, it was all the more important that the court below make the kind of review of the facts which the Constitution requires. If appellant is to be deprived of its property, it is at least entitled to know how that result was accomplished.

What has been accorded appellant is not a judicial review in any real sense, certainly not the independent judicial inquiry which this Court has clearly defined and required in a case of this kind, but only a search of the record for something in the form of testimony, irrespective of cogency or reliability, by which the Commission might be upheld. This has been accomplished through the use of phrases and legal abstractions culled from the opinion of other courts, but without reference to the facts before those other courts which gave their language the quality of valid pronouncements of law. This refusal of an independent review of the facts and the law was in itself a denial of due process, requiring reversal. *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 49-54.

CONCLUSION

It is respectfully submitted that the rate order should be held repugnant to the Constitution and that the judgment upholding that order should be reversed.

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APPENDIX

REVISED CIVIL STATUTES OF TEXAS, 1925

TITLE 28—*Cities, Towns and Villages*—

"CHAPTER 13—*Home Rule Art. 1175. Enumerated Powers.*—Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

"12 * * * To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless (on) proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose. * * *" (Acts 1921, p. 169.)

"CHAPTER 10—*Public Utilities—Art. 1124. Rates in Certain Cities.*—Any city having a special charter or a charter adopted or amended under the pro-

visions of chapter 13 of this title, and having authority under its charter to determine, fix and regulate the charges, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise in said city, shall in determining, fixing and regulating such charges, fare or rates of compensation, base the same upon the fair value of the property of such person, firm or corporation devoted to furnishing service to such city, or the inhabitants thereof, and not upon any stocks or bonds issued or authorized to be issued, by, or any other indebtedness of, such person, firm or corporation. No city shall be responsible for, concerned with, authorize, approve or have jurisdiction over, the issuance or sale of any stocks or bonds by any such person, firm or corporation, but the issuance and sale thereof shall be governed solely by the Constitution and laws of this State applicable thereto." (Acts 1st C. S. 1921, p. 152.)

TITLE 102—OIL AND GAS—*Natural Gas*—

"ART. 6052. *Utility office.*—Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe." (Acts 3rd C. S. 1920, p. 18.)

"ART. 6058. *Appeal from city control.*—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regula-

tion, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal *de novo*. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission." (Acts 3rd C. S. 1920, p. 18.)

"ART. 6059. *Appeal from orders.*—If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once

returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them." (Acts 3rd C. S. 1920, p. 18.)

TITLE 42—COURTS—*Practice in District and County*—

CHAPTER 8—*Trial of Causes.*

4. *Charge of the Court.*

"ART. 2185. *Requisites.*—The charge shall be in writing, signed by the judge, filed with the clerk, and shall be a part of the record of the cause. It shall be prepared after the evidence has been concluded and shall be submitted to the respective parties or their attorneys for inspection, and a reasonable time given them in which to examine and present objections thereto, which objections shall in every instance be presented to the court before the charge is read to the jury, and all objections not so made and presented shall be considered as waived. Failure of the court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon appeal upon proper exception. The judge shall so frame his charge as to distinctly separate questions of law from questions of fact, and not therein comment on the weight of the evidence, and so as to instruct the jury as to the law arising on the facts, and shall only submit controverted questions of fact." (Acts 1913, p. 113.)

"ART. 2189. *Special Issues.*—In all jury cases the court may submit said cause upon special issues without request of either party, and, upon request of either party, shall submit the cause upon special issues raised by the pleadings and the evidence in the case. Such special issues shall be submitted distinctly and separately. Each issue shall be answered by the jury separately. In submitting special issues the court shall submit such explanations and definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues. If the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court in refusing may be reviewed on proper exception in the appellate court, and this article shall be construed in connection with the succeeding article." (Acts 1913, p. 113.)

6. *Verdict.*

"ART. 2202. *Definition and substance.*—A verdict is a written declaration by a jury of its decision of the issues submitted to them in the case.

"1. It shall be signed by the foreman of the jury and shall comprehend the whole or all the issues submitted to it.

"2. The verdict is either a general or special verdict.

"3. The jury shall render a general or special verdict as the court may direct.

"* * *

"5. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court.

"6. A special verdict found under the provisions of this article shall, as between the parties, be conclusive as to the facts found." (Acts 1846, p. 363; Acts 1st C. S. 1897, p. 15; Acts 1913, p. 113; G. L. Vol. 2, p. 1669.)

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UNITED GAS PUBLIC SERVICE COMPANY, *Appellant*,

v.

STATE OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS.

APPELLANT'S SUPPLEMENTAL BRIEF.

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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APPELLANT'S SUPPLEMENTAL BRIEF.

Appellant's petition to the city of Laredo for increase in the 75 cent rate was dated June 27 and filed June 29, 1932 (R. 10-11, 1353), and not prior to January 1, 1932, as stated on page 68 of appellant's brief. See appellees' brief, p. 112. On page 36 of appellant's brief, the heading over the column of figures should read "Year ended December 31, 1933."

The appellees, in their brief,[1] have not responded to the errors assigned[2] separately or by any other appropriate

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[1] Appellees' brief was served on appellant in Houston, Texas on October 7, 1937, the case being set for submission the week of October, 11.

[2] The Assignment of Errors in appellant's petition for appeal contains thirteen paragraphs (R. 510-513), all of which were stated

grouping. They do not deny that, tested by the Railroad Commission's findings of property value and depreciation allowance and only the testimony of operations showing the highest rate of return, the enforcement of the 55 cent rate would leave appellant net return of 1-1/10 per cent for 1932 and of 2-1/10 per cent for 1933. See appellant's brief, Argument I, pp. 32-34. Appellees do not deny that the finding of the Court of Civil Appeals as to net return for 1933 under the 55 cent rate is wholly unsupported by evidence, or that appellant's statements with respect to the testimony upon which its calculations are made correctly reflect what the record shows. Appellant's brief, Argument II, pp. 35-37. Nor is there any such denial as to appellant's calculations of net return for 1932 and 1933 under the 75 cent rate (appellant's brief, Argument VIII, p. 68), or as to the mathematical accuracy of any of the net returns shown. There is no dispute that the record shows what appellant says it shows either in respect to the Commission's findings of fair value, depreciation allowance, return, 1932 or 1933 revenues with domestic gas computed at the 55 cent rate, or the lowest figures for operating expenses shown by the testimony.

Appellees' complaint is that these net returns are not computed as appellees think they should be, in that certain assumptions contrary to the facts are not made, in that annual operating figures instead of averages are used, and in that certain deductions were or should be made. See appellees' brief, Summary of Argument, XX, pp. 28-30. For the rest, appellees claim that the state courts reviewed and analyzed all testimony, but simply failed to make the record show this review and analysis (appellees' brief, pp.

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as the points upon which it intended to rely (R. 1407-1410). Appellant's brief specifies all but one of these paragraphs as assigned errors (Specification of Errors pp. 23-27) and presents argument thereon under nine points or headings. Appellant's brief, I-IX, pp. 32-79.

18-19, 21-22); that refunds leaving net returns of about 1 and 2 per cent respectively for 1932 and 1933 are immaterial, because these returns can be made to appear adequate by averaging in "fat years", (brief, pp. 27-28, 63-65); that the Court of Civil Appeals correctly decided confiscation by using the lowest valuation figure in the record and the average revenue figures for the four prior years July 28, 1928—July, 1932, (brief, pp. 25-29); and that increased sales are probable under the 55 cent rate, (brief, pp. 23-24, 53-63).

The major portion of the appellees' Argument (appellees' brief, pp. 67-111), is given over to details of the testimony with respect to fair value, operating revenues and expenses, depreciation reserve accrual and rate of return, just as though the case were before the Railroad Commission, with the testimony completed but no findings yet made. To support this argument, appellees have diligently collected from the testimony before the Commission as well as at the trial below, features which are asserted to reflect discredit upon appellant. These portions of the testimony are termed "principal fallacies in the Company's evidence" (appellees' brief, p. 111), and their cumulative effect is said to make this entire record so unreliable that it cannot convincingly show denial of due process and equal protection.

The appellees' theory is that while the Railroad Commission may reduce rates without anything but lump-sum findings of over-all value, depreciation allowance, net return, etc., and while the state courts need make or require no fact findings at all, the gleanings from all the testimony before these tribunals may be cumulated, presented in their most unfavorable light, and accepted by this Court as appellant's failure to show infringement of its constitutional rights.

Appellant has brought up that part of the record which it's counsel thought necessary for consideration of the errors it assigned in respect to the judgment of the state ap-

pellate court from which the appeal was taken. If it should have been prepared to meet an attack based on the weight of testimony as to proceedings by or before the City Council, whose 40 cent rate ordinance was set aside, or on the weight of testimony before the Commission, which has made its ultimate findings, or on the mere weight of any other testimony or on the credibility of the witness who gave it, then appellant has misconceived the scope of the appellate review in this Court.

It is in respect to one assignment only, i.e., its assignment on the failure of the state courts to consider and pass upon its claim of confiscation arising from the Commission's undervaluation of its property, that appellant attempts to summarize the proof. Appellant's brief, Argument, III, p. 37-47. There the summary is not for the purpose of having this Court pass upon the weight of the testimony and credibility of witnesses, but to show that appellant's claim of undervaluation was supported by competent proof sufficiently substantial so that it could not be said that such proof could not conceivably establish that the Commission's valuation was unreasonable. *Nashville, Chattanooga & St. Louis Ry.* v. *Walters*, 294 U. S. 405, 415-416; *Georgia Railway & Electric Co.* v. *Decatur*, 295 U. S. 165, 171. The remainder of the assignments are based upon points of law, or upon a combination of legislative findings and proof, which proof is indisputable by appellees on this record, because it was either given by appellees themselves, or because they did not refute it at the trial.

Being uncertain as to the extent to which assertions by appellees, made upon their theory of this appeal, might be taken as undisputed and applied in respect to the assigned errors upon which appellant relies, appellant will attempt to point out the respects in which certain of these assertions are unfounded. No attempt is made to correct every misstatement which appears in appellees' brief.

MISSTATEMENTS OR UNSUPPORTED CONCLUSIONS IN APPELLEES' BRIEF.

Under XX, p. 29, appellees' brief, the statement is made that revenues received from Central Power and Light Co. and Motor Fuel Products Co. in the calendar years 1932 and 1933 were deducted in computing returns for those years. This is not true. See testimony of Womack (R. 97, 99), where he says that in showing 1932 and 1933 operating revenues at the 55 cent rate, only gas billed at 75 cent rate was recomputed, and the actual revenues received from other customers in those years were included. See defendant's exhibit 1 (R. 69), showing that total operating revenues of $183,777.41 for the calendar year 1932 included $8,790.20 for public utility fuel sales; also defendant's exhibit 5 (R. 88C), showing this $8,790.20 as non-recurring revenue for 1932, and see Womack's testimony (R. 95-96), showing that calculations of return at the 75 cent rate were based upon gross operating revenues of $183,777.41. Revenues from these two sources in 1933 totaled $54.40. See defendant's exhibit 3, public utility for fuel sales, $54.40 (R. 79; also 88C). As to the remainder of asserted "erroneous bases of calculation" (appellees' brief, pp. 28-29), appellant indulged in no assumptions, no averages were made, and appellant used only the evidence showing the highest rate of return in every calculation in its brief, pp. 34, 36-37, 54, 68. These years were completed transactions, and in showing the result of enforcing the 55 cent rate, appellant applied the Railroad Commission's order as written (R. 26), and showed revenues as they would be after domestic sales in these years were figured at the 55 cent rate, and the difference refunded. The net return of 7 per cent found reasonable by the Commission (R. 25) was not used as the line of confiscation. It was used as a standard by which to compare the returns of about 1 per cent for 1932 and about 2 per cent for 1933 which enforcement of the 55 cent rate would actually leave.

In the first paragraph under Points VIII, IX and X, appellees' brief, pp. 47-48, appellees assert that the Commission, in finding fair value of $885,000, made detailed findings as to preliminary and organization expense, administrative and legal expense, engineering, interest and taxes during construction, fair value of gathering system, transmission system and distribution system property, reproduction cost new of entire plant, and that the Commission included the Jenning field pipe line and gathering system in the $885,000 at $135,000. Neither the Commission's opinion nor any other testimony shows that these alleged findings were made or what they are, and appellees' statement is based on a source of information outside this record. See Commission's opinion (R. 13-25), and compare this opinion with footnote 62, appellant's brief, p. 75.

On pp. 18-19, and again on pp. 21 (last paragraph), 22 and 44-47, of their brief, appellees assert that the District Court, the Texas Court of Civil Appeals, as well as it's Supreme Court, carefully reviewed and analyzed all the testimony in the record and thereby accorded appellant the exercise of independent judicial judgment on the facts. Appellees assert that this review and analysis constituted mental processes and reasoning of these courts which do not appear, nor are they required to be shown, in the record. Here again appellees' assertion, if true, is based on a source of information unknown to appellant and outside the record. The Supreme Court of Texas wrote no opinion (R. 474, 479) and the decision of the Court of Civil Appeals, as disclosed in its opinion, was upon the theory that the appellate court, in deciding confiscation claimed in respect to a new rate that had not been charged, must determine that question by paring down valuations to the lowest valuation shown by the evidence (R. 421, 422, 425) and must resolve all doubts against appellant by using only appellees' testimony of operations (R. 425). The Court of Civil Appeals did not say it had reviewed and analyzed the proof, and all it said and did in deciding the case forbids

any such conclusion. The requirement is that an independent judgment be exercised in respect to the facts. The means known to the law for disclosing the exercise of such judgment are analysis and findings. A court opinion is designed to reveal the essential bases upon which a case is decided. The only opinion showing the action of the state courts refutes appellees' contentions, and overrides their claim of superior information derived from sources outside the record.

Under their XIII and XXVI, appellees' brief, pp. 62-63, appellees point out that the block map showing the city of Laredo and appellant's distribution gas mains reveals that appellant has not extended its mains so as to adequately serve the city's inhabitants. See map (R. 1404). The inference is that all the subdivided area within the city limits is inhabited. This is untrue. Not over one-half of this area is inhabited, nor has it municipal, utility or other improvements. The claim is also made (appellees' brief, p. 60) that appellant does not wish as customers the humble Mexicans that Mayor Martin believed would take gas service at a lower rate. This is a half-truth. Strange, appellant's vice-president, testified that appellant desired all customers (R. 345), but that, as the type of population described by Martin (using one or two gas jets for light, a hot-plate for cooking and a small stove for space-heating) would constitute a burden because of the additional investment and operating costs entailed in comparison to the very small revenue to be derived, they were not desired (R. 345). There are also the wholly unsupported claims that appellant has arbitrarily raised its prices to Laredo industrial customers, particularly the electric company, and that its sales of gas at the State border for delivery and resale in Nuevo Laredo and Monterey, Mexico, are discriminatory and constitute "dumping." Appellees' brief, pp. 55-57. The electric company's managing official, Neiswanger, was a witness at the trial, and the claim which appellees now make could have been verified then and there, but was

not (R. 104-109; 543-544). The prices at the Mexican border were prices for gas to be transported and then distributed and sold. All testimony of this character went into the record over appellant's repeated objection that conditions were not shown to be like and comparable (R. 612, 613, 614, 616, 617, 627, 636). Appellees' argument amounts to the contention that in order to avoid a showing of confiscation, they have only to get into the record the wholesale price at which gas is delivered at another point, and thereby put upon appellant the burden of showing that no inference of discrimination could be drawn from the mere comparison of prices. It is needless to point out the factors to be considered in determining discrimination are numerous, sometimes intricate, and the final conclusion is always a matter of degree and sound judgment. Appellees' claim of excess line capacity for Laredo is in the same category, except that appellant introduced proof showing no such excess, even under the load conditions existing in 1932 and 1933. This proof is undisputed, and neither appellees' witnesses nor any of the Commission staff attempted to refute it (R. 348-349).

Appellees say "any school boy would recognize" that the difference between annual deliveries ended June, 1930 and for the calendar year 1933 would mean excess capacity. Appellees' brief, p. 61. The Railroad Commissioners know that gas pipe line capacity depends, not upon comparison of annual deliveries, but upon the coincident hourly peak demands which the line is called upon to handle, the divergency factor, the well pressures, and a number of other facts. One high pressure well cannot be used to boost up pressure jointly with low-pressure wells, as the high-pressure well will stop flow from all others, take the entire flow of the line, and void the sand area around the bottom of the well-casing so as to permit water to trap off the gas and ruin the well.

Appellees' attempt to answer appellant's assigned errors by argument upon the many subsidiary issues entering into fair value, rates of return and depreciation reserve accrual, and operating results is not only improper and unfair upon this diminished record, but is a belated recognition of the complete failure of the state courts to perform their duty in this respect. Because of the collateral character of this argument (appellees' brief, pp. 67-110) only the most important misstatements will be noticed.

Appellees say in their brief, pp. 75-79, that when appellant took over the property and assets of its subsidiary South Texas Gas Company in October, 1932, the voucher recording this transaction increased capital account in the net amount of only $934,798.02 to record the acquisition of the properties and assumption of liabilities (R. 242). This is true. Appellees say that the South Texas Company had previously acquired the properties of Texas Border Gas Company, which owned the Laredo distribution properties (R. 242), and that South Texas likewise owned the pipeline from the Jennings field to the State border at Roma, and that this Jennings-Roma line cost $800,000 or $900,000 when built in 1929 (R. 243). This is also true. Appellees then argue that this voucher constitutes an admission by appellant that the Jennings-Roma line, the pipe lines from Carolina-Texas and Jennings field to Laredo, and the distribution properties inside and outside of Laredo, were worth only $934,798.02 as of October 21, 1932. This is an unwarranted inference, conclusively negatived by the record. Appellant held the common stock of South Texas Gas Company, which was cancelled (R. 370), and it assumed all liabilities, including one issue of mortgage bonds of over $3,000,000 (R. 285). The total assets involved in this transaction were over $10,000,000.00 (R. 372). Plant and property account was $2,788,651.24 (R. 371). Appellees ignore that this voucher was not only to record acquisition of properties, but also the assumption of liabilities, and $934,798.02 was the net increase in appellant's assets after the acquisition and assumption.

As to the line to the Jennings field, appellees in their brief claim that appellant did not intimate before the Commission that the Jennings line was to be repaired (pp. 69-71), that its use in 1932 depended solely on the memory of Abernathy (pp. 68-69) and that reconditioning involved replacing practically the entire line (p. 68). At the Commission hearing, Greene told of the plans then being made to recondition the line for continuous future service (R. 229); the March 1932 blow-up in the Carolina-Texas line and the use of the Jennings line to continue service were covered by Greene (R. 157-158, 228-229) and Abernathy (R. 229-231). The line was 30 miles, or about 158,000 feet long, and the 1933 reconditioning involved replacement of 11,000 feet of pipe (R. 704). Hargrove is quoted as saying that this was the first repair job of any importance on the line since 1916 (p. 71) whereas he said this was the first such job since he came with appellant's predecessor in 1928 (R. 1103). Ivy, appellant's geologist, is quoted as saying that there was much "undeveloped gas reserve territory in the immediate vicinity" (p. 73), but what he said was that there was still a "whole lot of territory down there in that country that has not been explored yet" (R. 1099).

As to operating expenses, appellees' final claim is that, even though their accountant Lewis included all operating accounts except pipe line rentals and the 1 cent gathering charge in the Carolina-Texas field in the operating statements sponsored and introduced in evidence by appellees (their brief, p. 107), this Court should now undo what they have done, and strike out on appeal items of expense which the appellees did not eliminate in the trial court, where such action would have been subject to cross-examination and rebuttal proof. And in spite of the fact that appellant supported this gathering charge by proof of the required kind, which proof was never disputed (R. 113-121, 129-139), appellant has nevertheless used appellees own accounting figures in showing confiscation for 1933 (appellant's brief, pp. 34, 36, 68), and has used its own accounting testimony

only when that was the only proof which the record showed.

Appellees repeatedly charge appellant with attempting to withhold facts because it contended that since the testimony as to property value was at 1932 depression prices (R. 197), the operating results upon which the Commission made its determination should likewise be those as of the date of the inquiry, and because appellant contended that it was improper to base the 55 cent rate on the four year average revenues commencing July 1928 and reflecting pre-depression economic and wholly different operating conditions as compared to 1932 and 1933. But near the end of the brief (pp. 108-110), appellees claim estoppel against appellant for not making the proof before the Commission with respect to the obsolete nature of the Central Company's Laredo electric generating plant and the improvident investment in the Motor Fuel Products refinery, so as to show the Commission the permanently non-recurring character of these revenues. The precipitate downward trend of these revenues was apparent to any one looking at the city's testimony (R. 218). Moreover, the city insisted on introducing annual operating statements going clear back to January 1, 1911 (R. 1378-1378A), and the Commission did not reveal what operating figures out of this twenty-two years would be used until the Commission's order was entered without notice on June 13, 1933 (R. 26, 33). If the Commission had permitted appellant to examine the order and file exceptions (R. 235), as it did not, there might be some substance to this complaint.

In conclusion, it is submitted that appellees' claims with respect to the testimony relate only to matters winnowed out of the issues in the course of this appeal and have no bearing on the only issues before this court.

Respectfully submitted,

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

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APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

ON REARGUMENT
APPELLANT'S SUPPLEMENTAL BRIEF

JOHN P. BULLINGTON,
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Counsel for Appellant.

YOUNG CO., HOUSTON

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APPELLANT'S SUPPLEMENTAL BRIEF

The Court's questions at the first argument were directed largely to the nature of the State procedure and its application in this case. The order for reargument states the Court's desire to hear the parties especially on the application of the Commission's rate for 1932 and 1933 and as to the effect on appellant's rights, with respect to those years, of the bond given when the appeal to the Commission was taken. The purpose of this brief is to supplement appellant's main brief in regard to these matters.

The State Legislative Procedure.[1]

The power to fix in the first instance the gas rates charged in Laredo is delegated to its city governing body.[2] The original and exclusive power to fix rates and charges by natural gas pipe lines is delegated to the Railroad Commission of Texas.[3] When a municipality has reduced an existing gas rate, the gas company may have such action reviewed by the Railroad Commission by filing a petition and bond with the Commission upon such terms and conditions as it may direct.[4] This proceeding is called an appeal, and the Commission is required to hear the matter *de novo* and to make such order or decision as it may deem just and reasonable.[5] No other statutory standards are prescribed for the Commission in deciding such appeals.[6]

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[1]See appellant's main brief. "Proceedings Before the Railroad Commission," pp. 2-5, and appendix pp. 81-84.

[2]Laredo is a Home Rule city (R. 411), and is controlled by Section 12, Article 1175, Revised Civil Statutes of Texas, 1925, a recodification of Acts, Tex. Legis., 1913, pp. 307, 311; quoted in appellant's main brief, p. 81.

[3]Art. 6053, Rev. Civ. Stats. of Tex. 1925, a recodification of Acts, Tex. Legis., 3rd Called Session, 1920, Sec. 3, pp. 18-19.

[4]Art. 6058, Rev. Civ. Stats. of Tex., 1925, a recodification of Acts, Tex. Legis., 3rd Called Session, 1920, Sec. 6, p. 21; quoted in appellant's main brief, pp. 82-83.

[5]Art. 6058, *supra*.

[6]Harris v. Municipal Gas Co. (1933), not officially reported, 59 S. W. (2d) 355, 357, holding that the last sentence of Art. 6058—which provides for determination of the appeal by the Commission in 60 days and that the rates fixed by the municipality shall remain in force pending the Commission's decision—applies only to appeals from the municipality's denial of an application for increase in an existing rate. The Commission treats the 60-day provision as directory, not mandatory.

This proceeding reached the Commission as an appeal by Texas Border Gas Company (Art. 6058) from an ordinance providing for a reduction of the domestic gas rate in Laredo from 75 cents to 40 cents per 1000 cubic feet. The Commission ordered the ordinance suspended and the 75 cent rate continued in effect pending the appeal upon the company filing a bond for refunds. The hearing before the Commission, however, was upon testimony which, in effect, began with the gas at the bottom of the wells and extended to the consumers' burner tips, which showed separately the property value, revenues, operating expenses and other factors for service in Laredo only, and which made United Gas Public Service Company responsible for complying with the Commission's rate order of June 13, 1933, now before this Court. The way in which this came about is set out in footnote 7 below.

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[7]Prior to January 1, 1932, Texas Border Gas Company appealed to the Commission from the Laredo 40 cent rate ordinance (R. 7-9). See appellant's main brief, p. 3, and footnote 3. The Commission ordered the ordinance suspended (which continued the existing 75 cent rate in effect) and Texas Border Gas Company filed a refund bond in the amount and conditioned as required by the Commission (R. 10). About July, 1932, the same company perfected a second appeal (likewise under Article 6058) from the failure of the City to increase the existing domestic rate (R. 10, 11).

Appellant, about June, 1930 (R. 645, 885), had acquired control of Texas Border Gas Company, which owned the gas distribution properties in and adjacent to Laredo, and of South Texas Gas Company, which owned the field gathering and transmission properties used to bring the gas to the City. This control was obtained from the Moody-Seagraves interests (R. 603, 885), which interests in 1928 had formed these two subsidiary corporations and divided the ownership of the properties between them (R. 12). After acquiring these and other natural gas companies, appellant began dissolving unnecessary corporations, taking over their assets, assuming their liabilities and operating their

Thus both the appellate and original jurisdiction of the Commission were involved. The gathering, transmission and distribution properties were treated as one combined property. (R. 12.) This treatment, in so far as it ignored the former ownership of the properties by two subsidiaries, was in keeping with the testimony. For example, the former contract between Texas Border Gas Company and South Texas Gas Company fixing the price for gas delivered at the Laredo city gate, though mentioned by the Commission (R. 12), was not even

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7—*Continued*—

properties, includng those of Texas Border Gas Company and South Texas Gas Company (R. 222-224; 11; 75-78). South Texas Gas Company was made a party to both appeals and answered therein. All proceedings were consolidated for hearing (R. 11), which commenced October 4, 1932 (R. 9). The parties stipulated that a fair and reasonable field price of gas for Laredo was 5 cents per 1000 cubic feet at the wells (R. 11, 66). This stipulation was made so as to permit the gas for Laredo computed at 5 cents per 1000 cubic feet to be shown as an operating expense, in lieu of all testimony in respect to gas wells, leases, depletion allowances, reserves, etc. (R. 66).

On October 11, 1932, the hearing was recessed until November 9 (R. 9), and about October 21 (R. 238A) appellant, having acquired the physical properties and taken over the assets of both the distribution and pipe line companies, entered its appearance, adopted their pleadings, and thereafter became and was treated as the sole utility at interest (R. 11, 12). See appellees' petition (R. 1), appellant's answer (R. 31), and the stay orders in the State and Federal courts (R. 26-30).

As the pipe lines from the Jennings and Carolina-Texas fields to Laredo served several small communities and a few rural customers and part of the gas delivered at the Laredo city gate passed through the distribution system intermediate presssure loop and was used outside Laredo, joint expense and jointly used property were allocated as between service inside and outside Laredo, and only the figures applicable to service inside Laredo were shown in the exhibits. See descriptive headings (R. 200A, 201, 218).

introduced in evidence.[8] However, by showing separately each class of property appraised, i.e., gathering, transmission and distribution (R. 200-A, 203-208) and by motion for separate findings as to the value of each main element of property (R. 235), appellant attempted to forestall what it subsequently got, that is, a lump-sum over-all valuation figure from which it is impossible to tell whether any particular class of property was valued in the Commission's $885,000 total (R. 25) at the lowest figure shown by the evidence for that class of property, or at one-half or one-fourth of that lowest figure.

The State Judicial Procedure.

Unlike some other states, Texas has no special statute authorizing a suit in the State court for enforcement of a rate order accompanied by a stay pending final determination, such as is contemplated by the 1913 amendment to Section 266 of the Judicial Code; 37 Stat. 1013. Appellees alleged that this was such an enforcement suit, but that it was also an appeal under Article 6059, Revised Civil Statutes of Texas, 1925. (R. 6.)[9] Article 6059 provides that a gas company dissatisfied with a rate order of the Commission may file suit against the Commission in Travis County, Texas, setting forth its particular cause of objection. The statute requires

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[8]See the exhibits introduced at the Commission hearing (R. 195-196) and also the index to the printed record, Company's Exhibits pp. ix-x and City's Exhibits pp. x-xi.

[9]The theory that this suit was an enforcement suit under 28 U. S. C. 380 and an appeal under Article 6059 was upheld by the Court of Civil Appeals. See its opinion (R. 413, fol. 717). Article 6059 is quoted on pages 83-84, appellant's main brief.

the company to show by clear and satisfactory evidence that the order is unjust and unreasonable as to it, that the suit shall have precedence for trial and on appeal over suits of a different nature, and "shall be tried and determined as other civil causes in said court." Art. 6059, *supra*. The trial is *de novo* (R. 423) which the State law says does *not* mean:

> "a trial on appeal and on nothing but the record to correct errors, but does mean a trial of the entire case anew, hearing evidence, *whether additional or not.*" *Shultz & Bro. v. Lempert* (1881), 55 Tex. 273, 277.

And it has been held recently that:

> "any controverted factual grounds on which such order was predicated, would undoubtedly be matters for jury determination. But * * * the effect of such order * * * is clearly * * * a question of law for the court to determine; not one for submission to the jury." *Humble Oil & Refining Co. v. Railroad Comm.* (1936), not officially reported, 94 S. W. (2d) 1197, 1199, writ refused.

With a view to trial and determination as in other civil cases, appellant pleaded (R. 31-43) and proved (R. 65-195) the particular local facts it relied on to establish the constitutional invalidity of the Commission's rate order. *Appellant did not get such a trial and determination.* Appellant's claim that it was denied the rudiments of a fair trial is not directed to a trial *in accordance with state law,* but to trial contrary both to the state law of civil trials and to the rules declared by this Court for deciding confiscation in public utility rate cases.

Summary of the State Law Governing the Trial and Determination of Civil Cases.

Such cases are tried without regard to distinction between law and equity, the district court being the trial court of general jurisdiction.[10] The right to have all questions of fact decided by a jury is guaranteed by the State Constitution.[11] The State statutes insure separate findings on each material issue of fact, when requested by any party, both in jury trials[12] and where a jury is waived and the trial is to the court.[13] In jury trials, such findings are obtained by means of a charge consisting of definitions and separate interrogatories, each interrogatory embodying a single material question of disputed fact and to be answered separately by the jury,[14] submission in this manner being mandatory whenever requested.[15] Questions of fact not submitted by the charge when first exhibited to counsel may, before the charge is delivered to the jury, be called to the court's attention by preparing desired issues separately

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[10]Sec. 8, Art. V, Constitution of Texas; Prewitt v. Perry (1851), 6 Tex. 260, 262; Gibson v. Moore (1858), 22 Tex. 611, 615-616.

[11]Sec. 15, Art. I, Constitution of Texas.

[12]Arts. 2185, 2189, Rev. Civ. Stats. of Tex. 1925, quoted pp. 84-85, appellant's main brief.

[13]Art. 2208, Rev. Civ. Stats. of Tex. 1925, providing "Upon a trial by the court, the judge shall, at the request of either party, state in writing the conclusions of fact found by him separately from the conclusions of law."

[14]Arts. 2185, 2189, *supra*.

[15]Missouri, Kansas & Texas R'y Co. v. Improvement District (1927), 117 Tex. 34, 43; Fox v. Dallas Hotel Co. (1922), 111 Tex. 461, 475-476.

and in writing and requesting their submission. The court's notation "Refused" on any such issue constitutes the issue itself a bill of exception,[16] entitling the party requesting it to have failure to submit the question it embodies reviewed on appeal, and request in this manner prevents the question of fact presented by the issue from being taken as found in support of the verdict or judgment.[17] All facts must be found in the first

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[16]Art. 2186. *Special Charges.*—Either party may present to the judge such written instructions as he desires to be given to the jury; and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper. Such instructions shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. (Acts Tex. Legis., 1913, pp. 113 *et seq.*)

Art. 2188. *Refusal or Modification.*—When a special instruction is requested and the provisions of the law have been complied with and the trial judge refuses the same, he shall indorse thereon 'Refused,' and sign the same officially. If the trial judge modify a special charge, he shall indorse thereon 'Modified as follows: (stating in what particular he has modified the charge) and given, and exception allowed,' and sign the same officially. Such refused or modified charge when so indorsed shall constitute a bill of exceptions and it shall be conclusively presumed that the party asking said charge presented the same at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and the same shall entitle the party requesting such charge to have the action of the trial judge in refusing or modifying the same reviewed without preparing a formal bill of exception. (Acts Tex. Legis. 1917, pp. 389 *et seq.*)

Art. 2189. See p. 85, appellant's main brief.

[17]Art. 2190. *Submission of Issues.*—When the court submits a case upon special issues, he shall submit all the issues made by the pleadings and evidence. Failure to submit an issue shall not be deemed a ground for reversal of the judgment, unless its submission has been requested in writing by the party complaining of the judgment. Upon appeal or writ of error, *an issue not submitted and not requested* is deemed as found by the court in such manner as to support the judgment if there is evidence to

instance in the trial court[18] and when the trial is to a jury, the trial judge is without power to resolve disputed facts.[19] When facts are relied upon to show the invalidity of a legislative act, conflicts in the testimony with respect to those facts must be resolved by the jury and the trial judge then applies the law to the facts as the jury has found them.[20]

Between the Supreme Court of Texas (which has jurisdiction only of questions of law),[21] and the trial

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[17]—*Continued*—
sustain such finding. A claim that the evidence was insufficient to warrant the submission of any issue may be complained of for the first time after verdict, regardless of whether the submission of such issue was requested by the complaining party. (Acts 1st C. S., 1897, p. 15; Acts 1913, p. 113; Acts 1931, 42nd Leg., p. 120, ch. 78, Sec. 1).

[18]Choate v. San Antonio & Aransas Pass R'y Co. (1898), 91 Tex. 406, 409-410:

> "It is the province of the jury to determine questions of fact; but it is in the power of the trial judge to set aside the finding and to award a new trial. The Court of Civil Appeals has the same power upon appeal. But clearly the trial court cannot set aside the verdict of the jury and substitute its finding instead of the finding of a jury and render judgment accordingly. To say that the Court of Civil Appeals may do so when there is any conflict in the evidence, is to concede to that court a power over the facts greater than that possessed by the judge who heard the evidence, • • •. It had no power to make an original final determination of a question of fact. • • • It is contrary to the genius of our institutions as well as to the letter and spirit of every constitution ever adopted in this State, to suppose that it was ever intended to substitute the judgment of the appellate courts upon the facts of a case in place of that of the jury and to make the determination of these courts final."

[19]Stevens v. Karr (1930), 119 Tex. 479, 488, 489.

[20]Houston & Texas Central R'y Co. v. Dallas (1905), 98 Tex. 396, 417; Missouri, Kansas & Texas R'y Co. v. Improvement District (1927), 117 Tex. 34, 50-51.

[21]Sec. 3, Art. V, Constitution of Texas; Art. 1728, Rev. Civ. Stats. of Tex., 1925.

courts (which have exclusive jurisdiction to *find* the facts),[22] are the Courts of Civil Appeals. With exceptions immaterial here,[23] the intermediate appellate courts (Courts of Civil Appeals) are required by statute to make and file a conclusion of fact and of law in respect to each material error assigned.[24] A mere reading of the statute, without more, might give the impression that a Court of Civil Appeals is empowered, after a review of the evidence, to substitute its fact findings on disputed evidence for those in the trial court, or find the facts in the first instance where no finding was made below. Such is not the correct interpretation of the statute.[25] The review of the facts in the Court of Civil Appeals is to determine whether the findings in the trial court are supported by evidence and whether the evidence raises material questions of fact on which findings

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[22]See footnote 18, *supra*, p. 9.

[23]Findings are not required in cases as to which the Courts of Civil Appeals have final jurisdiction. Art. 1821, Rev. Civ. Stats. of Tex., 1925. The jurisdiction of the Courts of Civil Appeals was not final in this case, as the Railroad Commission of Texas was a party and the validity of an act legislative in character was involved. See sections 3 and 5, Art. 1728, *supra*.

[24]Art. 1873, Rev. Civ. Stats. of Tex., 1925. The pertinent parts of the statute are that the Court of Civil Appeals "shall make and file a conclusion of fact and law upon each material point assigned as error in that court. The evidence need not be stated, except when necessary to determine upon the correctness of some ruling of the court. Such findings of fact and conclusions of law may be included in the opinion of the court."

[25]A Court of Civil Appeals has no power to find the facts in respect to any issue as to which the testimony is conflicting. Patrick v. Smith (1896), 90 Tex. 267, 274; Choate v. San Antonio & Aransas Pass R'y Co. (1898), 91 Tex. 406, 409-410; Houston & Texas Central R. R. Co. v. Strycharski (1896), 92 Tex. 1, 9; Galveston, Harrisburg & San Antonio R'y Co. v. American Grocery Co. (1931), 122 Tex. 1, 13.

On original argument, the Court inquired as to the State judicial procedure in a number of respects. See Assignments 3 and 5 (R. 510-511), appellant's main brief, III pp. 37-47, and V pp. 50-54, and compare appellees' main brief, V, VI and VII, pp. 18-20, 44-47. The following section (pp. 11-15 hereof)—by illustrating what the State procedure would have been if the issue as to the inadequacy of the Commission's rate base had been treated below as a matter of substance—is intended as an aid in determining the *federal question, i.e.,* whether appellant has been afforded an adequate judicial review on the question of confiscation.

in the trial court were properly sought, but denied.[26] The rule is:

> "The province of determining questions of fact is in the trial court. The Court of Civil Appeals has the power to set aside its finding and remand the cause for a new trial. Where the evidence is without conflict, it may render judgment. But where there is any conflict in the evidence on a material issue, it has no authority to substitute its findings of fact for those of the trial court. Choate v. San Antonio & A. P. R'y Co., 91 Texas, 406." *Post v. State* (1914), 106 Tex. 500, 501.

See, also, *State v. Elza* (1918), 109 Tex. 256, 261. The conclusions and findings on the facts which a Court of Civil Appeals may make (Art. 1873, *supra*), are not to be confused with findings of fact in the usual sense.

Where the evidence will support only one legal conclusion, the trial court may instruct the jury to return a directed verdict, or the appellate court may render judgment. In determining whether a verdict should have been instructed or judgment rendered against a party, only the evidence and all inferences therefrom most favorable to that party are considered.[27]

This Case Was Not Tried and Determined as Required By State Law.

The denial of a trial in accordance with state law is illustrated by the issue as to the present fair value of

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[26] Art. 2190, footnote 17, pp. 8-9, *supra*.

[27] Joske v. Irvine (1898), 91 Tex. 574, 581-583; Wininger v. Ft. Worth & Denver City R'y Co. (1912), 105 Tex. 56, 58; Kirksey v. Southern Traction Co. (1919), 110 Tex. 190, 191.

appellant's property, found by the Commission to be $885,000. (R. 25.) Appellant averred that such value was in excess of $1,225,000 both in 1932 and 1933 (R. 39), and supported this claim by competent substantial proof. See appellant's main brief, pp. 37-43. The decisions of this Court recognize that one separate and distinct issue in confiscation cases is whether, by reason of the inadequacy of the base for the challenged rate, the result is confiscation (*Los Angeles Gas Corp. v. Railroad Commission,* 289 U. S. 287, 315-316), and that the utility is entitled to independent judicial judgment on this issue. *St. Joseph Stock Yards Co. v. United States,* 298 U. S. 38, 49-54. The court's charge (R. 380), when offered to counsel for inspection, did not permit fair value in either year to be found, and appellant moved forthwith for submission on special issues, which motion the trial judge overruled on the ground that his charge was a submission on special issues. (R. 372.) But see Articles 2185 and 2189, appellant's main brief, pp. 84-85, requiring the charge to "distinctly separate questions of law from questions of fact" and to "submit only controverted questions of fact" (Art. 2185) and that "special issues shall be submitted distinctly and separately" and "shall be answered by the jury separately." (Art. 2189.) Appellant then requested separately and in writing the issues on value it wished submitted, and all were refused. (R. 373-379.) There was nothing more that appellant could do, except preserve the error in another form by objections to the charge. See appellant's objections (R. 383-387), which were all overruled. (R. 387.)

The failure of the trial court to determine the issue

of value was duly assigned in the Court of Civil Appeals (R. 406-410, Assignments 11, *et seq.*). The Court of Civil Appeals should have reversed and remanded the case for a new trial because the issue of value had not been determined. Arts. 2189, 2190, *supra*, pages 8, 9. Instead, the Court held that the issue of value was merely a question of practice and refused to consider the assignments complaining of the failure to decide it. (R. 414.) See also appellant's motion for rehearing, paragraphs 31-32, 66-104, 151 (R. 440-441; 448-452), overruled without opinion. (R. 458.) No finding of value having been made in the trial court, the Court of Civil Appeals had no power to make a finding of fair value. *Choate v. San Antonio & Aransas Pass R'y Co.*, 91 Tex. 406, 409-410. The appellate court did not find that appellant's evidence was insufficient to raise an issue as to value, for then the holding would have been that, considering appellant's evidence alone and in its most favorable light, reasonable men could not find from that evidence that appellant's property had a present fair value of more than $885,000. See cases cited in footnote 27, *supra*, page 11; also *Irving v. Freeman* (1913), 106 Tex. 38, 40; *Cartwright v. Canode* (1914), 106 Tex. 502, 507. The issue of value could not have been taken as found in support of the verdict or judgment, both because it was a separate and distinct issue, and because its separate submission had been duly requested and refused. Arts. 2189, 2190, *supra*, pages 8, 9. The Court of Civil Appeals did what it said it did, and treated the issue of value as one of practice, not substance. (R. 414.)

The Court of Civil Appeals did not confine itself to

denying appellant a determination of the issue of value. The trial court had permitted appellees to introduce over appellant's objection (R. 298) a property appraisal of about $700,000. (R. 298-300, 229-230.) Appellees did not seek a jury finding on this testimony, nor did they except to the court's charge on that account. Concede, *arguendo,* that the Commission, having fixed a lower rate based on present fair value of $885,000 by order entered in June, 1933 (R. 26), having filed suit to enforce that order in July, 1933 (R. 1) and having made the order finding value at $885,000 its evidence at the trial (R. 64), could then attack the value that was the base for the very rate it was seeking to enforce, and thereby raise an issue of fact. But if all that be conceded, nevertheless the right to a finding that value was less than $885,000 was waived by not seeking such a finding from the jury. See *Ormsby v. Ratcliffe* (1928), 117 Tex. 242, 245-246, holding that separate and independent issues, not submitted or requested (Art. 2190, footnote 17, pages 8, 9, *supra*), are waived, and are not deemed to have been found in such manner as to support the judgment, the only issues deemed found in support of the judgment when not submitted or requested being subsidiary issues of fact related or supplemental to *findings* of the ultimate facts on which the judgment rests. Yet the Court of Civil Appeals based every calculation in respect to confiscation on $700,000. (R. 422, 425.) Appellees' inference that the Court found $700,000 as fair value cannot be supported. If appellees raised an issue as to whether fair value was $700,000, the jury was the only body in the whole State judicial system that could find it, the jury did not find

it, the appellees waived it, neither the trial judge nor the appellate courts had power to make such a finding, and the Court of Civil Appeals held that $700,000 was used because that was "the lowest valuation shown by the evidence." (R. 425.)

The trial of this case was directly opposed to the state law. As shown by Point V of appellant's main brief, pp. 50-54, the judgment below was based on a purported rule made by combining *phrases* from four federal decisions. The use of the phrase "resolving all doubts against appellant and using valuations pared down unsparingly" is an example. (R. 421, 425.) These words were taken from *Newton v. Consolidated Gas Co.*, 258 U. S. 165, 174 and were quoted from Judge Hand's opinion. 267 Fed. 231, 261, 269. Judge Hand was passing on over 100 exceptions (267 Fed. at p. 232) taken to a master's report finding confiscation. He found that if he gave effect to all exceptions having any semblance of merit (thus resolving all doubts and paring down values), the result was still confiscation. Judge Hand used the short way of overruling 100 exceptions, but needless to say, he was not announcing a rule of constitutional law.

Effect of the Application of the Commission's Rate for 1932 and 1933.

The calculations in appellant's main brief showing the result of enforcing the Commission's order for 1932 and 1933 are recopied here as Tables 1 and 2. See pages 32-37 of said brief for the testimony supplying the figures used in Tables 1 and 2.

TABLE 1

(Copied from page 34, appellant's main brief)

	Year Ended December 31, 1932	Year Ended December 31, 1933
Operating revenues, with domestic gas sales computed at the 55 cent rate (R. 93)	$161,637.65	$138,256.85
Operating expenses, before depreciation reserve accrual	$125,001.40 (R. 69, 74)	$ 93,298.46 (R. 253)
	$ 36,636.25	$ 44,958.39
Depreciation reserve accrual; 3 per cent of $885,000, as found reasonable by the Commission (R. 21)	$ 26,550.00	$ 26,550.00
Net return	$ 10,086.25	$ 18,408.39
Rate of return on $885,000	1-1/10 per cent	2-1/10 per cent

TABLE 2

(Copied from pp. 36-37, appellant's main brief)

	Year Ended December 31, 1932	Year Ended December 31, 1933
Operating revenues after enforcement of the 55 cent rate (R. 93)	$161,637.65	$138,256.85
Operating expenses, as shown by appellees (R. 253)		$ 93,298.46
Undisputed by appellees (R. 93)	$125,001.40	
Net revenues before depreciation or income tax	$ 36,636.25	$ 44,958.39
Provision for depreciation as given by appellees' witness Elrod (R. 322-323, 330)	$ 25,000.00	$ 25,000.00
	$ 11,636.25 or about 1-7/10 per cent of $700,000	$ 19,958.39 or about 2-8/10 per cent of $700,000

Table 1 is calculated on the basis of the Commission's findings of fair value and depreciation allowance (R. 21, 25), because those findings (on which the Commission's rate was based) are the only *findings* of value and depreciation allowance which the State has provided in either the legislative or judicial stages of this proceeding. Table 2 is calculated on the basis of $700,000, using $25,000 for depreciation allowance, in order to show the result if the lowest figures testified to by any witness

are used. For the testimony showing (1) the lowest valuation figure, see plaintiffs' exhibit 12 "Total Value Depreciated—$698,047" (R. 330), and (2) the lowest depreciation allowance, see footnote 28 below.

Tables 1 and 2 show, on the testimony of operating revenues and expenses which appellees either gave or did not refute, the actual result of enforcing the Commission's order from its effective date until the record closed.[29] During 1932 and 1933, appellant's gross op-

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[28]Elrod's Calculation of Annual Depreciation Allowance Applied to His Final Appraisal:

The depreciation base given by Elrod was cost new (R. 322), treating land, leases and rights of way, materials and supplies, preliminary and organization expense and working cash as non-depreciable property (R. 330, fol. 566). His annual percentage was 3 per cent of cost new, after deducting non-depreciable items (R. 322):

New Cost (R. 330)		$901,675.00
Deduct (R. 330):		
Land, leases and rights of way	$10,475	
Materials and supplies	19,744	
Prelim. & Org. Expense	15,857	
Working Cash	9,788	
	$55,864	$ 55,864.00
Depreciation Base		$845,811.00
3 per cent of $845,811 is		$ 25,374.33

Before Elrod corrected plaintiffs' exhibit 9 (R. 298) by offering plaintiffs' exhibit 12 (R. 329), he calculated the depreciation base from plaintiffs' exhibit 9, and testified that the depreciation base, subject to the corrections still to be made, was $829,559 (R. 323). 3 per cent of $829,559 is $24,886.77.

[29]Under the State practice, the record closed April 24, 1934, the date judgment was entered (R. 389) and motion for new trial overruled (R. 401), and could not be enlarged thereafter. Stephens County v. McCammon, Inc. (1932), 122 Tex. 148, 154, holding that when "an appellate court is called upon to revise the ruling of a trial court it must do so upon the record before that court when such ruling was made." See also Brown v. Torrey (1858), 22 Tex. 55, 56, and Chrisman v. Graham

erating revenues at the higher prevailing rate yielded, after the same deductions for operating expenses and depreciation accrual as in Tables 1 and 2, only 3-6/10 per cent of $885,000 in the first of these years, and 4-4/10 per cent of that value in the second. See Table 3, footnote 30 below, and compare p. 68 and footnote 54, appellant's main brief.

The testimony before the Commission reveals the method by which the order was made, and has a material bearing on the confiscatory result of applying the order. January 1, 1932, was a focal point in this case. As of that date, the City made its rate ordinance effective (R. 8-9), the Commission acquired jurisdiction to review the ordinance and, if the ordinance were set

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29—*Continued*—
(1879), 51 Tex. 454, 456. And see footnote 39, pp. 49-50, appellant's main brief, for cases holding that the Commission lost jurisdiction while its order was in litigation and has no power to relieve from the effect of its order in respect to past transactions, regardless of whether its order is in litigation or not.

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TABLE 3

At the Prevailing 75 Cent Rate

	Year Ended Dec. 31, 1932 (R. 69)	Year Ended Dec. 31, 1933 (R. 253)
Op. Revs.	$183,777.41*	$158,822.62
Op. Exp.	125,001.40	93,298.46
Available for return and depreciation	58,776.01	65,524.16
Provision for depreciation (R. 21)	26,550.00	26,550.00
Available for return	32,226.01	38,974.16
Rate of return on $885,000 (R. 25)	3-6/10 per cent	4-4/10 per cent

*These revenues contain $8,790.20 (R. 88C) received for sales for public utility fuel (R. 69) to the Laredo electric plant of Central Power & Light Company.

aside, to substitute its order for the ordinance (R. 427-428), and appellant continued to charge the 75 cent rate under bond to refund such part of the product of that rate as was in excess of a reasonable return. (R. 411, 427.) The form of the Commission's order is unusual. There was no finding that the existing rate was excessive. The new rate schedule was promulgated with a retroactive effective date (January 1, 1932), and thus the refund provision of the order has been made operative from the first day of 1932 throughout the succeeding years. The Commission identified the testimony on which it calculated the 55 cent rate (R. 22), but did not set out these calculations. Had it done so, the face of its order would have shown that before 1932 began, the existing 75 cent rate was yielding less than 7 per cent return after 3 per cent for depreciation on $885,000. See Table 4, footnote 31, below.

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TABLE 4

Operations at the Prevailing Rates for the 12 Months Ended July 31, 1932.

Evidence at the Commission Hearing	*Company* (R. 201)	*City* (R. 218)	Without crediting power plant and refinery (non-recurring) revenues and gas expense *Appellees* (R. 291)
Op. Revs.	$194,524.57*	$194,458.09*	$179,059.79
Op. Exp.	127,414.62	114,149.62	109,973.16
Available for depreciation and return	67,109.95	80,308.47	69,086.63
Provision for depreciation (R. 21)	26,550.00	26,550.00	26,550.00

The Commission's calculation of the new rate necessarily would have disclosed that the reduction was based, not on the last year, but on the first three of four prior fiscal years, which years covered a period that began July 1, 1928, and ended June 30, 1931. See the Commission's opinion (R. 22) and compare city's exhibit L. (R. 218.) Rates which at the time they were reduced were not even yielding the return which the Commission found reasonable were lowered nevertheless because of earnings from July, 1928, to July, 1931.

The appellees offered testimony showing that for the five annual periods covered by plaintiffs' exhibit 8 (R. 253) net revenues at the existing rates before provision for depreciation or income tax, without crediting the revenues received from the local power plant and oil refinery (R. 291), would be as set forth in Table 5, footnote 32 below. Appellant has made a

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31—*Continued*—

Net available for return	40,559.95	53,758.47	42,536.63
Approximate rate of return on $885,000	4-1/2 per cent	6 per cent	4-8/10 per cent

*Total operating revenues of $194,524.57 and $194,458.09 include $15,398.30 (R. 88C) received from sales to the electric power plant, a source of income that permanently disappeared during 1932. (R. 88C, 104-113.)

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TABLE 5

At the Prevailing Rates, But Excluding Non-Recurring Revenues and Gas Expense (R. 291).

Twelve Months Ended	*Net Revenues Before Provision for Depreciation or Income Tax*
June, 1929	$104,148.59
June, 1930	100,257.84
June, 1931	94,206.71

mathematical average of these revenues and compared the average with the requirement for return and depreciation found by the Commission in its order. (R. 21, 25.) This comparison is made, even though at least the first two of the five years shown by Table 5 were a period of high values and boom prices.

In Table 6, footnote 33 below, appellant has separated the revenues shown by Table 5, using June, 1930, as the beginning of the depression, in view of the fact that the depression started with the stock market crash in the fall of 1929, was first felt in the financial and manufacturing centers, but did not manifest itself to any extent in raw-products states like Texas until the crop marketing season of 1930.

32—*Continued*—

July, 1932	69,086.63
Dec. 1933	65,469.76
Total	$433,169.53
Yearly average for 5-year period	86,633.91
Requirement for 3 per cent for depreciation and 7 per cent for return, computed on $885,000, as found by the Commission (R. 21, 25)	88,500.00
Deficiency—5-year average	$ 1,866.09

33

TABLE 6

Showing All Revenues, Except Non-Recurring and Power Plant and Refinery Sales, and Including Domestic Revenues at the 75-Cent Rate

12 *Months Ended*	1920 *Boom Period* (R. 291)	*Depression Period* (R. 291)
June, 1929	$104,148.59	
June, 1930	100,257.84	
June, 1931		$ 94,206.71
July, 1932		69,086.63
Dec. 1933		65,469.76
Total	$204,406.43	$228,763.10

Appellees' Contentions:

Appellant hesitates to discuss or characterize appellees' contentions in so far as they may relate to the application of the Commission's rate, because it is not at all sure that it or anyone else can tell exactly what those contentions are. At the trial, appellees offered no testimony showing the application of the 55 cent rate for 1932, for 1933 or for any other period, and they do not show the application of the rate in their briefs here. Under Summary of Argument XX, p. 28 of their main brief, appellees say that appellant "has consistently used one or more or all of the following erroneous bases of calculation:", but the subsections that follow are as general as the statement just quoted, and appellees present no argument under Section XX, p. 28. The points which appellees argue are summarized in footnote 34 below, and appellant will confine its discussion to points which appellees thought sufficiently important to justify argument.

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[33]—*Continued*—

Yearly average	$102,203.22	$ 76,254.36
Requirement for 3 per cent for depreciation and 7 per cent for return on $885,000	88,500.00	88,500.00
Excess	$ 13,703.22	
Deficiency		$ 12,245.64

[34]The Index to appellees' main brief shows argument on the following points (where the argument is said to cover several related points, the first point is stated, and the others shown only by number):

		PAGE
I	No lack of notice or hearing claimed	43-44
V	No impossible burden placed on the Company. Also VI and VII	44-47

The points argued by appellees, contrasted with those on which they present no argument, constitute an implied admission that the testimony shows the 55 cent rate confiscatory for 1932 and 1933. Confiscatory returns for these two years, however, are claimed to be "immaterial" (XIX, footnote 34, *supra*, pp. 23-24), because of appellees' *hypothesis* of excess net earnings in later years as an offset to the confiscation shown in this record.

In arguing the effect of improved business conditions on "Probable Future Revenues" (footnote 34, *supra*, pp. 23-24), appellees ignore every factor except gross revenues. They do not mention the concomitant higher property values and construction costs, the increased payrolls and cost of operating supplies, the sharp rise in rates of taxation and the new taxes and levies which business has not known before.[35] The *extent* of the presumptive increase in each of these factors, the *ratio* of gross revenues to operating expense, the *ratio* of net revenues to property value, *after the presumed increase*

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[34]—*Continued*—

VIII	No findings of fact by Commission or reviewing courts required by statute, rule or due process. Also IX and X	47-53
XIII	Under actual test of 55c rate increased consumption and net revenues definitely shown probable in record	53-63
XIX	Immaterial that refunds ordered for period during which revenues below average	63-66
A	Rate Base	67-92
B	Operating Expenses	92-108
D	Probable Future Revenues	53-63 and 108-110

[35]The generally higher prevailing values and operating costs are themselves matters of judicial knowledge, while increase in gross revenues is an inference from judicial knowledge of improved business conditions.

in each factor and as they exist in respect to appellant's gas operations for Laredo, Texas, are not matters which a court can judicially know, but which require concrete proof of the specific facts as the basis for its judgment. See *Ohio Bell Telephone Co. v. Commission,* 301 U. S. 292, 300-302.

In so far as appellees' claim of "Probable Future Revenues" is based on an assumption of increased use at the 55 cent rate, it will be recalled that the Commission's rate was estimated on the average revenues of four prior years, which average included approximately $58,000 per year received for gas sold as fuel to a local power plant and an oil refinery (R. 37, 87, 88C, 89-91). These power plant and refinery revenues were not the product of the domestic rate, and they cannot be brought back by changing that or any other gas rate. The appearance of these revenues in the operating statements used for rate purposes was a fortuity (the fact that these plants happened to be inside, rather than outside, the city limits). The disappearance of the power plant revenues from Laredo operating statements is due to a recognized advance in the art, *i. e.,* central station service through interconnected high voltage lines instead of local plants (R. 104-109). The oil refinery revenues are gone—not because of the depression, as this company's losses before 1931 made it insolvent (R. 110)—but because the refinery could not support itself in an isolated local market handling the low gasoline-content crude oil of that area, and could not compete for other markets because of the distance to those markets (R. 109-110).

The Commission's order reduces the price of a serv-

ice the citizens of Laredo have been accustomed to use for over 20 years (R. 622). The statistics showing the number of patrons of the several utilities in Laredo support the conclusion that, at the 75 cent gas rate, there are 400 or 500 families that have gas in their homes, but no running water; 1600 or 1700 families having gas, but no electric lights; and over 2000 that have gas, but no telephones (R. 123-124). See appellant's main brief, footnote 56, p. 70. This would not be so if the 75 cent rate prevented a full enjoyment of appellant's service. The presumption is that electric rates in Laredo are reasonable, yet there were only about 10 electric ranges, one electric water heater, and very few electric space heaters in that City (R. 123). The houses in Laredo are customarily built without chimneys (R. 626), and in 1933, the annual gas bill per domestic consumer was $26.69 (R. 347), or slightly over 7 cents per day, for cooking, water heating and space heating. These three uses are necessities in the present day household, and when gas burning equipment is once installed, appliances burning other fuels are discarded, and gas is used for all the household fuel requirements. For example, a gas range and a wood or coal cook stove are rarely seen side by side in the same kitchen.

The influence of price on the use of gas is not to be confused with the price influence in the case of electricity, for while electric lights are a household necessity, many other home appliances requiring electric energy are still in the semi-luxury, luxury, or novelty stage, where a low electric rate will help sell the appliance and result in an increased use of electricity. These are fair inferences from the testimony or matters

of common knowledge. And for the effect of reduced gas rates on revenues see footnote 36.

Appellant will not discuss Rate Base[37] (footnote 34, *supra*, pp. 23-24), but appellees' statements as to operating expenses amount to a claim that the expenses were padded, and that information was withheld from appellees' accountant Lewis, with the result that even his operating expense figures are too high. Appellees do not deny that total operating expenses for the year ended December 31, 1932, were $125,001.40; or that this figure is the only evidence of operating expenses for that year, nor do they deny that by using $93,298.46, appellant has based its calculations on the lowest amount for 1933 operating expenses shown by any testimony in this case. But by listing and arguing certain kinds of expenses, without identifying them by amount, year in which incurred, class, or account,[38] appellees

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[36] See footnote 56, page 71, appellant's main brief, and compare appellees' claim that Amarillo, which is in Potter County, Texas, has no fuel oil nearby (their brief, pp. 54-55) with the petroleum production figures of the Amarillo or Panhandle Field, particularly the Borger Field, in the County adjoining Potter County, as reported in Federal Trade Commission, "Panhandle Crude Petroleum" Washington, U. S. Government Printing Office, 1928; "Petroleum Investigation," Hearings before a Subcommittee of the Committee on Interstate and Foreign Affairs, Washington, U. S. Government Printing Office, 1934, Part 3, p. 1834.

[37] Appellant does not know what more favorable rate base it could use than the base on which the rate was made and the lowest valuation figure given by any witness.

[38] Appellant's books were kept in the regular course of business according to the uniform classification of accounts of the National Association of Railroad and Utility Commissioners and as approved by the American Gas Association, were audited annually by auditors in no way connected with appellant and were the basis on which it accounted to all governmental agencies. (R. 67-68.)

seek to raise a doubt about operating expenses without furnishing any means whatever of resolving the doubt or weighing its effect. See appellees' main brief, pp. 93-108.

Proof that appellant has used operating expense figures most favorable to appellees is in the record. Its exposition is tedious. Appellees' accountant Lewis was employed by the city, was practically without previous experience in proceedings of this kind, and his testimony was not supported by any member of the Commission accounting staff.[39] Appellees were given free access to all appellant's records and fully availed themselves of this opportunity.[40]

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[39]Lewis was licensed as a certified public accountant in 1927 and graduated from the School of Business Administration of the University of Texas in June, 1928. (R. 1284.) His only previous connection with public utility records for rate purposes was through employment, jointly with another firm of accountants, by an engineering firm engaged on behalf of the Railroad Commission in an investigation of the Lone Star Gas Company of Dallas, Texas. (R. 723-724.) Kinney, appellees' only other accounting witness, was senior accountant employed by the same firm that employed Lewis. (R. 725.) Kinney and Lewis divided the work between them, Kinney covering the period prior to April, 1928, Lewis, 1928 and subsequent years. (R. 725.) Much of the work was not pertinent to this inquiry. See plaintiffs' Exhibit 4 (R. 1110), which was not conformed to the unit for rate making; plaintiffs' Exhibit 5 (R. 1111-1112), showing earning statements for each year from January 1, 1911.

[40]Lewis and several assistants spent between 8 and 9 months examining the records of appellant and all its predecessor companies. (R. 724-725.) Lewis testified that he was given "the free run of the books of the company," and "I was never refused any records that I thought were there. There were some things we could not find in those older records, but everything that was available, I am sure was made available to me." (R. 814.) Kinney testified to a like degree of cooperation. (R. 787-788.)

Appellant reported total operating expenses for 1933 to be $119,821.04 (R. 79), Lewis reported the same total to be $93,298.46 (R. 253) and his Exhibit furnished no clue to the discrepancy. Lewis was asked on cross-examination to compare appellant's 1933 statement with his and explain each difference and the amount. When this testimony was completed, it appeared that in no instance had appellant included operating expenses not actually incurred in serving Laredo and recorded on its books in the regular course of business. There was no suggestion of fraud, bad faith, or improvidence. The discrepancy resulted solely from the failure of Lewis to include all operating costs in the total. The comparison thus made is summarized in Table 7 below:

TABLE 7

Operating Expenses for the Year Ended December 31, 1933

Class of Expense	*Defendant's Exhibit* 3 (R. 79-83)	*Expenses Not Reported in Plaintiffs' Exhibit* 8	*Expenses Included in Plaintiffs' Exhibit* 8 (R. 253)
Production	$ 21,111.61		$ 14,997.10
Carolina-Tex Gathering Charge		$ 3,422.53 (R. 275)	
Reduction in Stipulated Well Head Price		2,642.27 (R. 275)	
Transmission	10,131.28		2,511.69
Pipe Line Rentals		2,352.90 (R. 805)	1,645.39

Operations and Maintenance Expense		2,099.50 (R. 806)	
Distribution	13,978.32		10,814.78
			4,609.09
Utilization	7.91		
Customers	14,136.54		14,145.74
New Business	6,077.61		2,805.19
		2,768.24 (R. 277)	
General	39,456.00		27,876.42
Rate Case		3,170.48 (R. 278-279)	
Legal		4,212.05 (R. 278-279)	
Supervision Fees		2,479.13 (R. 278-279)	
Taxes	14,921.77		13,893.06
Total	$119,821.04	$ 23,147.10	$ 93,298.46

1933 Operating Expenses Not Reported Or Included By Lewis in Plaintiffs' Exhibit 8 (R. 253)

Production:

Carolina-Texas Field Gathering Charge—$3,422.53
(Appellees' main brief, XXVI-B, 1, pp. 93-94)

The Carolina-Texas gathering system was not included in the inventory or appraisals. (R. 23, 157, 321.) This gathering system was located in the central and north part of the field, and has been rented at a charge of 1 cent per MCF in 1929 by reason of well-failures in the south part of the field. (R. 119-121.) The Railroad Commission did not question the need for this charge, but allowed it at only 1/2 cent per MCF, basing the re-

duction on a calculation which assumed, contrary to the facts (R. 227-228), that for a 5-year period (what 5 years is not shown) all gas for Laredo had been gathered in the north and central parts of the field through this gathering system. (R. 23.) The gathering system was owned by an affiliated company, and at the trial appellant introduced special proof of the circumstances under which it was rented, and proved that, applying the Commission's own method of calculation, the charge was reasonable. (R. 113-121, 129-131.) Lewis omitted all rentals paid for the use of this gathering system in 1933, amounting to $3,422.53. (R. 275, 286-287.)[41]

Reduction of Stipulated Well-Head Price—$2,642.27
(Appellees' main brief XXVI, 9, pp. 105-106)

Contrary to the stipulation entered by the parties and accepted by the Commission at the hearing before it (R. 11, 66), Lewis computed gas at a well-head price of 4.257 cents, instead of 5 cents, per MCF for 1933 (R. 275), testifying that 4.257 cents was the average price paid to the well owners during that year. (R. 843.) Repudiation of the stipulation was only as to 1933, as 5 cents per MCF was used by appellees in show-

[41]Lewis gave as his reason for omitting the charge that if the pipe line from Jennings Field and thence to Monterrey had not been built, and if the Jennings field had been held solely for Laredo, it would not have been necessary to get gas for Laredo in the north and central parts of the Carolina-Texas Field; that in some instances, gas had been billed at 8 cents per MCF., plus 1 cent gathering charge, and that the gathering system rental contract, while it required the lessor to maintain the gathering lines and extend them to other wells as needed, required appellant to pay the cost of operating the lines. (R. 757-761.)

ing the operating expenses of all other years. (R. 261-262.) Appellant proved that the price paid the well-owner did not include measurement, geological, land and lease, chemical, production accounting, or administration costs incurred by appellant in producing those wells (R. 101-102), or the cost of carrying reserves, which were production costs in addition to and added about 25 per cent to the bare well-head price (R. 361), and this testimony was undisputed. The difference between gas at 5 cents (to cover all production expense) and the bare purchase price used by Lewis amounted to $2642.27. (R. 275.)

Transmission:

Pipe-Line Rentals—$2352.90

(Appellees' main brief XXVI, B, 4, pp. 95-97.)

This was the pro rata part of the rental paid Southern Gas Company, an affiliate, for using the pipe line extending from Jennings Junction toward Jim Hogg Field, to which pipe line the East Jennings gathering system was tied. See map, R. 216B, 1405. This line delivered gas to the Jennings-Roma line regularly, and was used to supplement the supply for Laredo (R. 227-228) on account of the low pressures in West Jennings. (R. 649-650.) This rental contract was canceled and rental payments ceased about November, 1933. Appellant did not offer special proof in support of this rental. See Ivy's testimony in respect to the fields expected to supply Laredo. (R. 253.) The contract was made and performed in good faith, and appellees' reckless statements in regard to it are not sup-

ported by evidence. The line, so far as Laredo was concerned, was for stand-by and emergency use.

Operations and Maintenance Expense—$2099.50
(Appellees' main brief XXVI, B, 3, p. 95)

The pipe lines from Carolina-Texas and Jennings Fields to Laredo were in the same pipe line district with the pipe line from Jennings Junction to Roma, and all lines were operated and maintained by the same forces. Lewis divided all transmission and maintenance expense between the pipe lines to Laredo and the Jennings Roma line on the basis of the respective volumes of gas carried by each line, while appellant prorated such of these expenses as could not be traced to a particular line on the basis of lineal and 3-inch equivalent[42] miles of pipe, each given equal weight. The pipe line to Roma was 12 inches in diameter, the Laredo lines had sections 6, 8, 10 and 12 inches in diameter. See map (R. 216B). The Roma line was laid in 1930, the Laredo lines in 1916 and 1922-1933. See appellant's main brief, p. 9. Pipe line maintenance costs and operations costs are not a function of the volume of gas handled, being related to size, duration in service, length and other similar factors. The method employed by Lewis charged the Roma line with over three times as much maintenance and operations expense as the older Laredo lines on a 3-inch equiva-

[42]The method generally used to reduce gas pipe of different sizes to a common denominator, for example, one lineal mile of pipe 6 inches in diameter is two miles of 3-inch equivalent pipe.

lent basis. See footnote 43, below. This was wholly arbitrary, resulting in the omission of $1195.91 of operations and $903.59 of maintenance expense or a total of $2099.50 incurred in serving Laredo. (R. 806.)

New Business:

(Not argued by appellees)

Lewis omitted 1933 new business expense amounting to $2,768.24 (R. 277), on the theory that this expense ought to be incurred or charged only in the case of new gas properties and not in Laredo, where the business was well developed (R. 289) and because of his erroneous belief that so-called "industrial engineering" (preliminary engineering done to demonstrate to industries using other fuels that their plants could be adapted to the use of gas) was done only for industries served directly by pipe lines. (R. 879.)

General Expense:

Rate Case Expense—$3170.48

(Not argued by appellees)

The Commission allowed this expense, to be amor-

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[43] TRANSMISSION OPERATIONS EXPENSE

	Roma Line (R. 888-889)	Laredo Line
Per lineal mile	$276.69	$41.87
Per mile of 3-inch equivalent pipe	69.52	19.79

TRANSMISSION MAINTENANCE EXPENSE

	Roma Line (R.889	Laredo Line
Per lineal mile	$191.44	$28.97
Per mile of 3-inch equivalent pipe	48.10	13.69

tized over 10 years. (R. 24.) Rate case expense shown by appellant for 1932 and 1933 amortized the part of such expense incurred through 1933 on a 10 year basis. (R. 367-368.) Lewis omitted all this expense[44] (R. 278-279) amounting to $3,170.48, and did not attempt to justify the elimination. (R. 282.)

Legal Expense—$4212.05
(Not argued by appellees)

Lewis eliminated all legal expense, mistaking it for rate case expense (R. 278-279),[45] and make no examination to determine the source or justification of the charges for legal services. (R. 280-282.)

Supervision and Consultation Fees—$2479.13.
(Appellees' main brief, XXVI, 5, pp. 98-99)

Appellant offered the required proof showing the character of services for which these fees were charged (R. 191-194) and the cost to Electric Bond and Share Company of rendering the services to appellant for which the fees were paid. (R. 195.) Lewis eliminated this expense. (R. 278-279.) See Lewis' testimony (R. 278-279) showing elimination of two such items, $411.55 and $1,828.31, totaling $2,479.13.

Other items argued by appellees are uncollectible bills

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[44]See Lewis' testimony showing elimination of valuation and regulatory commission expense, items of $440.66 and $411.55 (R. 278) and $1238.47 and $1079.80 (R. 279), totaling $3170.48.

[45]See Lewis' testimony showing elimination of law expense $619.33 and $296.25 (R. 278) and $1,745.19 and $1,551.28. (R. 279.)

(XXVI B, 5, pp. 99-101) which Lewis included in the sum of $1,940.75 (R. 270), and which he should have included, because appellant's books show total amounts billed customers (R. 273-274) and therefore *receipts* are less than billings by the amount of the uncollectibles (see *Florida Telephone Co. v. Commission*, 47 F. (2d) 467, 469) and donations, (XXVI B, 7, p. 101) which in 1933 totaled $138. (R. 278-279.) The rate case and legal expense and supervision fees omitted by Lewis total close to $10,000, and these items account for all but a very minor part of the difference between general expenses as shown by appellant and by Lewis. And there are a number of miscellaneous small differences, resulting mainly from the use of different allocation factors in conforming the testimony to the city borders as a rate unit.

If only the arbitrary and unauthorized eliminations discussed above are restored to 1933 operating expenses, then the change in Table 1 would be:

	1932	1933
Op. Revs. (R. 93)	$161,637.65	$138,256.85
Op. Exp. (R. 69)	125,001.40 (R.253)	93,298.46
	36,636.25	44,958.39
Provision for depreciation	26,550.00	26,550.00
	10,086.25	18,408.39
Restore Lewis' arbitrary eliminations		23,147.10
	Return 1-1/10 per cent on $885,000	Deficit of $4738.71

The Bond Given On Appeal to the Commission.

Appellant is at a loss to understand what question there can be as to the refund bond at this stage of the case. There was a question concerning the bond before the Court of Civil Appeals, but that question was only in respect to the power given the Commission by state statute.

The question arose in this way. Appellees undertook to introduce the bond generally before the jury and the trial court excluded it.[46] The judgment in the trial court declared the refund provision of the Commission's order invalid. (R. 390-391.) The Court of Civil Appeals based its action reforming the judgment below and enforcing the order from January 1, 1932, on the *power* of the Commission to make the rate it fixed effective as of any date after it had actually acquired jurisdiction. (R. 427-428.) Under this holding, the bond was immaterial, and the Court did not pass on the cross-assignment complaining of the exclusion. If the bond had been necessary to the judgment, the Court of Civil Appeals could not have treated the bond as in evidence, even though erroneously excluded, but was re-

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[46]The record showing the offer and exclusion of the bond is as follows (words in parenthesis ours):

"*Mr. Lange*: We offer this (meaning a certified copy of the bond filed by appellant with the Commission on its appeal from the Laredo ordinance) in evidence.

"*Mr. Coates*: To which defendant objects because—

"*The Court*: Is there any issue on that, that the Railroad Commission did not have jurisdiction?

"*Mr. Coates*: No, sir.

"*The Court*: The objection is sustained.

"*Mr. Lange*: Note our exception. That is all, Mr. Petet.

"*Mr. Coates*: No cross-examination." (R. 538-539.)

quired to reverse and remand the case for a new trial. *Eidson v. Reeder* (1907), 101 Tex. 202, 204-205; *Abbott Oil Co. v. San Antonio Brewing Association* (1911), 104 Tex. 574, 575-576.[47]

Appellant raises no question as to the power of the Commission to require a bond for refunds or as to when the Commission may make its order effective. What appellant seeks is the protection of the Constitution against the confiscatory effect of this order. The Commission cannot so condition the privilege of securing suspension of a rate ordinance as to secure a *valid* consent from appellant to surrender its constitutional rights (*United States v. Chicago, Milwaukee, etc. R. Co.*, 282 U. S. 311, 328-329), nor can it prevent appellant from securing an *adequate* judicial review of the validity of its order. *Chicago, Milwaukee & St. Paul R'y Co. v. Minnesota*, 134 U. S. 418, 459-460; *Chesapeake & Ohio R'y Co. v. Conley*, 230 U. S. 513, 521-522.

Respectfully submitted,

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant.

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[47]In the Abbott Oil Company case, *supra*, the suit was to enforce a contract secured as to performance by a bond, but the bond was excluded from evidence. The Supreme Court of Texas said that, upon holding the exclusion of the bond erroneous, the appellate court could not construe the bond and base judgment thereon, but was required to reverse and remand for a new trial.

ADDENDA

Appellees' assertions, made on pages 7-9 of their second supplemental brief, and repeated in the Index to that brief, that appellant (pp. 7-8) "deliberately refused" to divulge its general expense figure for 1933, and that this resulted in their (p. 8) "entire inability" to obtain the necessary information on general expense for this year, are baseless. See cross-examination of Womack by appellees (R. 567-568), and note that Womack gave there the general expense figure he understood appellees to call for, and that when appellees pursued the inquiry further, the court directed them to go on to other matters and call Womack back later (R. 568). When Womack was recalled to the stand near the end of the trial, appellees did not ask him for this figure (R. 1080-1084; see 813). Appellees refer to page 811 of the record, where Lewis testified that he could not reconcile his 1933 general expense figure (R. 253) *exactly* with appellant's (R. 79), but could *approximately* (R. 811), and proceeded to make this reconciliation (R. 812-813), giving all differences in general expense except $147.00 for transmission properties and $47.00 for distribution properties (R. 813, fol. 966). It is clear from the record that the only reason why appellees wanted the general expense figure was to reconcile differences *exactly* (R. 811-813).

Appellant promptly cross-examined Lewis to determine whether there was or would be any claim that information was withheld (R. 814). Lewis testified that all information had been furnished. Appellees' counsel stated and the court ruled that no such claim was being made, directly or by implication (R. 814, fol. 967). See also footnotes 39 and 40, p. 28, and "General Expense," pp. 34-36, appellant's supplemental brief on reargument, and Article 6052 of the Texas Statutes, p. 82, appellant's main brief.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

NO. [redacted] 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

versus

STATE OF TEXAS, ET AL.,
Appellees

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLEES' MOTION TO DISMISS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

NO. 807

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

versus

STATE OF TEXAS, ET AL.,
Appellees

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLEES' MOTION TO DISMISS

To the Honorable Supreme Court of the United States:

Appellees move that this appeal be dismissed, as having been improvidently granted, for the following reason:

PROPOSITION:

THIS COURT HAS NO JURISDICTION OF THIS CAUSE FOR THE REASON THAT THE APPEAL WAS TAKEN SOLELY FROM THE COURT OF CIVIL APPEALS FOR THE THIRD

SUPREME JUDICIAL DISTRICT OF TEXAS (AN INTERMEDIATE APPELLATE COURT) AND FROM THE FINAL JUDGMENT OF OCTOBER 30, 1935, RENDERED BY SAID COURT, AND NOT FROM THE SUPREME COURT OF TEXAS, (THE HIGHEST COURT OF THE STATE) OR FROM THE JUDGMENT OF SAID HIGHEST COURT, DATED OCTOBER 6, 1936, REFUSING WRIT OF ERROR AND THUS AFFIRMING, WITHOUT OPINION, THE JUDGMENT OF THE COURT OF CIVIL APPEALS; AND THE APPEAL, THEREFORE, HAS NOT BEEN TAKEN FROM THE FINAL JUDGMENT OF THE "HIGHEST COURT OF A STATE IN WHICH A DECISION IN THE SUIT COULD BE HAD", AND WAS ACTUALLY HAD IN THIS CASE, AS PROVIDED BY SECTION 237 OF THE JUDICIAL CODE, U. S. C. TITLE 28, SECTION 344 (a).

STATEMENT.

Appellant has appealed solely from the Court of Civil Appeals and from the final judgment of said Court of October 30, 1935, and does not even purport to have appealed from the Supreme Court of Texas, or from the judgment of that Court refusing application for writ of error, October 6, 1936, or from the order of the Supreme Court of Texas overruling Appellant's motion for rehearing of such application, December 30, 1936. The necessary excerpts from the record to substantiate this statement will be found in *Appendix A* hereof.

As stated by Appellant in its jurisdictional statement (*Appendix A hereof*, pp. 21, 22, 23) this case was not final in the Court of Civil Appeals but the Supreme Court of Texas had, and actually exercised, jurisdiction thereof under Sub-division 5 of Article 1728, R.C.S. of Texas, the Railroad Commission of Texas being parties to this case.

ARGUMENT.

It is to be observed, from the excerpts in *Appendix A*, that Appellant's own appeal papers reflect affirmatively in the record that the application for writ of error was filed in the Court of Civil Appeals, later transmitted to and duly filed in the Supreme Court of Texas, and that such application, together with Appellant's motion for rehearing thereof, were overruled by the Supreme Court of Texas. See Par. 5 of *Appendix A* hereof. It further appears therefrom that Appellant's praecipe for contents of the transcript to come up to this Court was split in twain, and the two parts thereof were designed to bring up both the principal record which was first transmitted from the Court of Civil Appeals to the Supreme Court of Texas in connection with the application for writ of error and later on denial thereof remitted back to the Court of Civil Appeals, *and also a portion of the record remaining in the Supreme Court of Texas itself*, consisting of the original application for writ of error (which under the State law and practice remains on file in the Supreme Court of Texas after denial) and the State Supreme Court's orders refusing such application and overruling motion for rehearing thereof. See Par. 7 of

Appendix A hereof. Appellant does not show that it has, and as an actual fact it has not, presented petition for appeal to any Justice of the Supreme Court of Texas or to any Justice of this Honorable Court within the time or in the manner provided by Federal law, purporting or attempting to appeal from the judgment of the Supreme Court of Texas of October 6, 1936, refusing Appellant's application for writ of error, or from its order of December 30, 1936, overruling Appellant's motion for rehearing of its application for writ of error.

This Court has held that where the state court of last resort is vested with appellate jurisdiction to review the judgment of an intermediate appellate court, and has declined to grant the writ, this Court will accept the interpretation of the state court of last resort as to whether the denial of writ amounts to a total *refusal to exercise jurisdiction*, or whether it constitutes in effect an actual exercise of such jurisdiction, and is tantamount to an *affirmance* of the intermediate appellate court's judgment without written opinion. In the latter event, the appeal properly lies from the judgment of the state court of last resort and not from that of the intermediate appellate court.

Norfolk and Southern Turnpike Co. vs. Virginia, 225 U. S. 264, 267-269, 56 L. Ed. 1082;
F. S. Royster Guano Company vs. Virginia, 253 U. S. 412, 413, 64 L. Ed. 989;
Hetrick vs. Lindsey, Ohio, 265 U. S. 384, 386, 68 L. Ed. 1065;
Matthews vs. Huwe, 269 U. S. 262-266, 70 L. Ed. 266;

Tumey vs. State of Ohio, 273 U. S. 510, 515, 71 L. Ed. 749;
Van Huffel vs. Harkelrode, 284 U. S. 225, 230, 231, 76 L. Ed. 256;
Whitfield vs. Ohio, 297 U. S. 431, 435, 80 L. Ed. 778, 782.

The present law conferring jurisdiction upon the Supreme Court of Texas to review judgments of the Courts of Civil Appeals by writ of error is embraced in Article 1728 of the Revised Civil Statutes of Texas, 1925 Revision, as amended by Act of 1927. *(Appendix E hereof)*

In order that this Court may, if it wishes, trace with understanding the evolution of our present Article 1728, as amended in 1927, we may explain that the subject matter of said Article has been taken from the following jurisdictional Acts, of which we append true copies of the pertinent portions as appendices hereto, and explain that such Acts have been carried into code revisions in the Revised Civil Statutes of Texas of 1895, 1911, and 1925:

Appendix B:

Acts of 1892, Chapter 14 (S.B. 33, H. B. 12) approved April 13, 1892, amending certain Articles of the Revised Civil Statutes of 1879.

Appendix C:

Acts of 1913, Chapter 55 (H. B. 117) approved March 28, 1913, effective ninety days thereafter, amending certain Articles of the Revised Civil Statutes of 1911.

Appendix D:

Acts of 1917, Chapter 75 (H. B. 38) approved March 15, 1917, effective July 1, 1917, amending the jurisdictional Article of Revised Civil Statutes of 1911; and Chapter 76 (H. B. 39) approved and effective March 15, 1917, authorizing Justices of the Supreme Court of Texas to designate Justices of the Courts of Civil Appeals to pass upon applications for writs of error and providing that in such cases the refusal of application for writ of error by such designated Justices of the Courts of Civil Appeals should not be regarded as "a precedent or authority in any other cause." Also the substance of said Chapter 76, as now embodied in Articles 1748-1752 inclusive, of the Revised Civil Statutes of Texas, 1925.

Appendix E:

Acts of 1927, Chapter 144 (S. B. 7) approved March 25, 1927, effective ninety days thereafter, amending Article 1728 and providing for the first time that the Supreme Court of Texas should *refuse* application for writ of error where it approves both the judgment and opinion of the Court of Civil Appeals and should "dismiss for want of jurisdiction" where it approves the judgment below, but does not approve the opinion below.

The only Texas case wherein the Supreme Court of this State has directly passed upon the legal effect of its refusal of a writ of error, as being an *affirmance*, and as distinguished from a *dismissal* "for want of jurisdiction," is *Gammel Statesman Publishing Company vs. Ben C. Jones and Company*, 206 S. W. 931, (not officially reported) by the Commission of Appeals of

Texas, (a statutory auxiliary branch of the Supreme Court of Texas) decided December 11, 1918, and in which the opinion and judgment of the Commission of Appeals were expressly adopted as those of the Supreme Court of Texas, per memorandum of Phillips, Chief Justice. That case is so important and controlling that we have appended hereto as *Appendix F*, a certified copy of the opinion, judgment, and order of adoption. In that case action had been brought in the District Court by Ben C. Jones and Company, as Plaintiff, against Gammel Statesman Publishing Company, et al, as Defendants. The trial court rendered judgment in favor of the defendants. Plaintiff appealed to the Court of Civil Appeals, which Court first rendered opinion and judgment affirming the trial court. Plaintiff (appellant), after making several motions in the Court of Civil Appeals, filed *its* application for writ of error with the Supreme Court of Texas, which Court on February 7, 1912, *refused* such application as in this case. The record was thereafter duly remitted to the Court of Civil Appeals as provided by Rule 4 of the Supreme Court of Texas, *Appendix G* hereof.. Plaintiff thereafter filed in the Court of Civil Appeals several more successive motions to set aside the previous judgment of the Court of Civil Appeals. The Court of Civil Appeals granted the last of those motions and entered its opinion and decree, purporting to set aside its previous judgment of affirmance, and remanding the cause to the District Court for new trial. From this last mentioned order of the Court of Civil Appeals the defendants, in whose favor the cause had previously been decided, filed with the Supreme Court of Texas *their* application for writ

of error. The original plaintiff and appellant, Ben C. Jones and Company, moved to dismiss this second application for writ of error for want of jurisdiction. The Supreme Court of Texas overruled that motion, *and in holding that the State Supreme Court's previous action in refusing the first application for writ of error was an affirmance of the judgment of the Court of Civil Appeals, which judgment thereby became the judgment of the State Supreme Court,* the Commission of Appeals in its opinion said:

> "The motion in the case before us was filed and acted upon by the Court of Civil Appeals after the Supreme Court had *refused* a writ of error in said cause, *and by such action affirmed the original judgment of the Court of Civil Appeals and that of the trial court.* The judgment of the Court of Civil Appeals entered in granting the motion not only set aside and vacated its judgment rendered at a former term, *but also in effect set aside and vacated the judgment of the Supreme Court in denying the writ of error in said cause. It is well settled that, when the jurisdiction of the Supreme Court attaches,* the Court has full control of the cause and can make such orders concerning it as may be necessary to preserve the rights of the parties and enforce its mandates. *Its jurisdiction continued until the case is fully determined by the Court and its judgment is completely executed by the Court below.* For the purpose of enforcing its mandates, it may make any order, and, if necessary, may resort to the writ of mandamus or any other appropriate writ known to our system of jurisprudence. Wells v. Littlefield, 62 Tex. 28. *The action of the Supreme Court in refusing a writ of error in this cause was*

binding on the Court of Civil Appeals. The Court of Civil Appeals at the time the motion under review was filed and acted upon was without jurisdiction of the case and had no power to enter any order or judgment therein . . . .

"To hold otherwise would be to deny to the Supreme Court its power as a court of last resort. . . . . . (Italics ours)

"We are of the opinion that the motion to dismiss the application for writ of error should be overruled, and that the order and judgment entered by the Court of Civil Appeals setting aside and vacating its former judgment and reversing and remanding the cause for a new trial should be held to be void and of no effect."

Phillips, Chief Justice of the Supreme Court of Texas, then entered the following endorsement in the cause:

"The *judgment* recommended by the Commission of appeals is adopted and will be entered as the *judgment* of the Supreme Court. *We approve the holding of the Commission on the question discussed.*" (Italics ours)

Thus, it is clearly apparent that the Supreme Court of the State not only adopted the judgment recommended by the Commission of Appeals in the case, but also approved the *opinion in toto* and adopted it as the opinion of the *Supreme Court proper*.

Thus, in the only case with which we are acquainted in which the Supreme Court of Texas squarely passed upon the effect of the refusal of the writ (as distinguished from its dismissing of an application "for want of jurisdiction" under the present statutory practice), it has plainly and authorita-

tively been decided, that refusal of an application for writ of error amounts to an express affirmance of the judgment of the Court of Civil Appeals, and makes that judgment the judgment of the Supreme Court of Texas, so that the latter is vested with plenary jurisdiction thereafter to enforce its judgment by all appropriate process; and this, although the record transmitted from the Court of Civil Appeals to the Supreme Court of Texas on application for writ of error, upon refusal of such writ, is required to be remitted to the Court of Civil Appeals, whence the mandate issues for the enforcement of the judgment. See Articles 1767, 1768, R.C.S. Tex. 1925, and Rule 4 of the Supreme Court of Texas, quoted in *Appendix G* hereof. This mandate from the Court of Civil Appeals, after writ refused by the Supreme Court of Texas, is, therefore, a mandate not merely for the enforcement of a judgment of the Court of Civil Appeals, but for the enforcement of a *judgment of the Supreme Court of Texas itself*, and it is only in rare and exceptional instances, such as that illustrated by the unusual case above cited, that the Supreme Court of Texas ever has occasion to intervene and enforce its judgment by extraordinary process. *If the Texas Supreme Court's action in refusing an application for writ of error were a refusal to exercise jurisdiction, rather than an affirmance of the judgment below, its jurisdiction would never have attached in the case cited, and it would, therefore, have had no power to intervene on the second application and enforce its previous judgment refusing the writ of error, and the Court of Civil Appeals would have remained free to deal with its own final judgment as it might see fit.*

If this was the law prior to the Act of 1927, (and plainly it was, as the above cited case has never been overruled or modified but is still the sole authority on the point), then the same rule even more plainly applies, and with greater force, under the amendment of 1927, (*Appendix E* hereof) wherein for the first time it was provided that upon application for writ of error the Supreme Court of Texas should refuse same if it approves both the judgment and the opinion below, but should merely "dismiss for want of jurisdiction" where it is satisfied with the *result* reached by the Court of Civil Appeals, but not satisfied with the principles of law or reasoning enunciated in the opinion of the latter court.

Thus, under the present practice, it is plain, beyond controversy, that where the Supreme Court of Texas *refuses* an application for writ of error, as it has done in the present case, and does not merely dismiss the same "for want of jurisdiction", under the Act of 1927, it necessarily approves and affirms, without new written opinion of its own, both the judgment and the opinion of the Court of Civil Appeals. The reason the State Supreme Court ordinarily does not write a new opinion of its own is that by the very act of refusing the application, under the express provisions of the present law, it necessarily adopts and approves as its own the *opinion* as well as the judgment of the Court of Civil Appeals. What would be the point of writing another opinion in addition to, and merely paraphrasing, the opinion of the court below, which under the Act of 1927 it approves and adopts as its own, by the act of refusing the writ? As a matter of fact the Supreme Court of Texas, in refusing

writs of error in some cases in which it deems it important to do so, does write opinions. See *Henderson vs. Chesley*, 116 Tex. 355, 292 S. W. 156, and *T. & N. O. Ry. Co. vs. Neill*, 100 S.W. (2d) 348, not yet officially reported. What more could the Supreme Court of Texas do by way of affirmance by actual exercise of jurisdiction than to approve and adopt as its own both the judgment and opinion of the intermediate appellate court, with the con comitant legal result that, as held in the *Gammel Statesman Publishing Company case, supra*, the Supreme Court of Texas has jurisdiction to enforce same as its own?

Under the cases from this court above cited, the appeal to the Supreme Court of the United States should, therefore, have been taken from the Supreme Court of the State, and from its judgment, and *not* from the Court of Civil Appeals, or its judgment.

This Court should not be confused by cases wherein the Supreme Court of Texas has no potential jurisdiction whatever to review a particular judgment, as illustrated in the case of *Burguieres v. Farrell*, 87 S.W. (2d) 463. (Texas Supreme Court, not officially reported.) See also *Pacific G. & E. Co. vs. Police Court of Sacramento*, 251 U. S. 22, 24, 64 L. Ed. 112. The case at bar is different from the statutory "dismissal for want of jurisdiction" under Article 1728, as amended in 1927. This class of cases is illustrated by *Bain Peanut Company of Texas v. Pinson and Guyger*, 119 Tex. 572, 34 S. W. (2d) 1090; *Fisher v. City of Bartlett*, 88 S. W. (2d) 1068; and *Houston Oil Company of Texas v. Village Mills*, 109 Tex. 169, 202 S. W. 725, 226 S. W. 1075. In this class of cases, an appeal to this Court from the judgment

of the Court of Civil Appeals, rather than that of the Supreme Court of Texas, has been sustained: *Bain Peanut Company of Texas v. Pinson*, 282 U. S. 811, 75 L. Ed. 726; 282 U. S. 499, 75 L. Ed. 482.

The only cases cited by Appellant to sustain the jurisdiction of this Court on appeal from the Court of Civil Appeals, where writs of error have been *refused* by the Supreme Court of Texas, are:

Bacon v. Texas, 163 U. S. 207, 215; 41 L. Ed. 132 (1896);
Sullivan v. Texas, 207 U. S. 416, 422; 52 L. Ed. 274 (1908);
S. A. and A.P.R. Co. v. Wagner, 241 U. S. 476, 477; 60 L. Ed. 1110 (1916);

If it will be of any aid to the Court, we might also cite:

Stanley v. Schwalby, 162 U. S. 255, 269; 40 L. Ed. 960 (1895);
T. and N. O. R. Co. v. Sabine Tram Co., 227 U. S. 111, 113; 57 L. Ed. 442 (Jan. 27, 1913);
St. L. S. F. and T. R. R. Co. v. Seale, 229 U. S. 156; 57 L. Ed. 1129 (May 26, 1913);
Zucht v. King, 260 U. S. 175; 67 L. Ed. 174 (Nov. 13, 1922);
Barwise v. Sheppard,____ U.S.____; 81 L. Ed.____ (Adv. Op. No. 10, Nov. 9, 1936).

The only reason we can conceive why jurisdiction was sustained in the above cited cases was that all of them, with the exception of *Zucht v. King*, and *Barwise v. Sheppard*, were decided before the 1917 Act went into effect, and before the decision of the Supreme Court of Texas of December 11, 1918, in *Gammel*

Statesman Publishing Company vs. Ben C. Jones and Company, supra, which case has apparently never been brought to the attention of this Court. All of such cases, with the exception of *Barwise v. Sheppard,* were decided before the 1927 amendment.

In some of the above cited cases no motion to dismiss was filed or urged in this Court. This was true in *Barwise v. Sheppard, supra.* In others, the Appellees either did not have available, or at least did not clearly or adequately present to this Court, the conclusive authorities upon which we now rely.

No matter what conclusion this Court may have reached on this question of exclusively state law in its prior decisions in the absence of and prior to any decision of the question by our highest state court, or through not being fully advised in the premises; when our State Supreme Court decided *Gammel Statesman Publishing Company v. Ben C. Jones and Company,* supra, this Honorable Court became bound to follow same thereafter, once it is properly called to this Court's attention: *Edward T. Blair v. Commissioner of Internal Revenue,* No. 247, Feb. 1, 1937, 81 L. Ed.....,(Adv. Op. No. 7, 265). *Ernest O. Thompson, et al v. Consolidated Gas Utilities Corporation,* id. 270, 280. Where appellees in a long series of cases and over a long period of years fail to present the law properly to this Court, and thus waive their rights, the practice of allowing appeals from the intermediate appellate courts where their judgments have been affirmed by refusal of writs of error by the Supreme Court of Texas, does not become fixed, or rendered proper, merely by reason of hoary age or long acquiescence,

where the impropriety thereof is duly called to this Court's attention as these Appellees are now doing in this motion. While this Court will take judicial notice of the law of a State when properly called to its attention, yet the existence of the law must be made to appear to this Court clearly: *Shapleigh v. Mier*,_____ U.S._____, 81 L. Ed._____ (Adv. Op. No. 5, Jan. 4, 1937).

If this Court entertains any doubt whatsoever as to the action of the Supreme Court of Texas in refusing a writ of error (as was done in this case) being in legal effect an actual exercise of jurisdiction and an affirmance upon the merits, Appellees will file motion in the Supreme Court of Texas for a supplemental opinion upon this point and submit same to the Supreme Court of Texas for such action as it may deem proper.

that the action of our State Supreme Court in refusing a writ of error under the present law and practice is a refusal to exercise any jurisdiction at all and is not an affirmance of the judgment of the Court of Civil Appeals, because of the provisions in Article 1750 of the Texas Revised Civil Statutes of 1925 that "the refusal or dismissal of any application shall not be regarded as a precedent or authority." That provision was first enacted as a part of Section 4 of H. B. 39, Chapter 76, of the Act of 1917, (*Appendix D*). A reading of that Act discloses that it was enacted as a measure to relieve the crowded condition of the Application Docket of the Supreme Court of Texas. It provided that the Justices of the Supreme Court might designate three Justices from the Courts of Civil Ap-

peals to pass upon such applications for writs of error as the Supreme Court might refer to them, and that this practice might be followed as long as, and whenever, the crowded condition of the docket might require it. Obviously where applications for writs of error were passed upon by Judges of the Courts of Civil Appeals, and not by the Justices of the Supreme Court, it was not deemed by the Legislature that the refusal or dismissal of an application for writ of error by such Judges of the Courts of Civil Appeals should be regarded as making the judgment of the Court of Civil Appeals a judgment of the Supreme Court proper, by approval and adoption, so as to be regarded as a "precedent or authority" of the Supreme Court in other causes, as would be the case where a writ of error was refused upon consideration by the Judges of the Supreme Court itself. For that reason in Section 4 of said Act it was for the first time enacted that "the refusal or dismissal of any application shall not be regarded as a precedent or authority in any other cause." A reading of the entire Chapter, more particularly Section 4 thereof, discloses that the above quoted provision was intended to apply, and does now apply, only to cases where such designated Justices of the Courts of Civil Appeals pass upon and refuse or dismiss applications for writs of error, and does not apply to cases where the Justices of the Supreme Court proper have denied such applications as is the case in this appeal. The Supreme Court of Texas experimented with the power granted in 1917 only a few months during that year, and upon its being found unsatisfactory and impractical it was abandoned and has not been used since.

In this present case, the Appellant's application for writ of error was not passed upon by any Judges of the Courts of Civil Appeals, but was passed upon by the three Justices of the Supreme Court proper and the judgment and opinion of the Court of Civil Appeals thereby became an authoritative decision of the Supreme Court of Texas, itself. If this Court desires we will make motion in the Supreme Court of Texas for a supplemental opinion embracing these facts subject to such action as that Court may see fit to take.

was effective at the time our Supreme Court decided the case of *Gammel Statesman Publishing Company v. Ben C. Jones and Company, supra;* on December 11, 1918. In that case the first application for writ of error, (made by Ben C. Jones and Company on January 4, 1912, and denied by the Supreme Court of Texas on February 7, 1912) was governed by the provisions of the Act of 1892, *(Appendix B);* and at the time that application was acted upon, it was refused by the members of the Supreme Court proper and not by Justices of the Courts of Civil Appeals. Obviously, then, the authority of *Gammel Statesman Publishing Company v. Ben C. Jones and Company, supra,* is not in the least militated against by the presence, in the 1917 Act, of the provision that "the refusal or dismissal of any application" (by designated Judges of the Courts of Civil Appeals) "shall not be regarded as a precedent or authority in any other cause," which provision was carried forward into Article 1750 of the Revised Civil Statutes of 1925. (*Appendix* D, p. 42, infra.)

In any event, the above quoted provision does not purport to affect the *legal quality* of the judgment of the Supreme Court of Texas refusing an application for writ of error as being an *affirmance* of the judgment of the Court of Civil Appeals, or merely a *refusal by the Supreme Court of the State to exercise jurisdiction.* It merely prescribes that the refusal of an application for writ of error by designated Justices of the Courts of Civil Appeals, acting for the Supreme Court, shall not make the judgment of the Court of Civil Appeals a judgment of the Supreme Court proper so as to be regarded as a "precedent or authority" as are decisions of the Supreme Court proper. The distinction is plain and based upon reason.

Such provision cannot, therefore, affect in any way the question now before this Court. It certainly cannot detract from the binding effect of *Gammel Statesman Publishing Company v. Ben C. Jones and Company, supra,* which is an authoritative decision of the Supreme Court of Texas itself and is not merely the decision of a Court of Civil Appeals in which a writ of error was refused by designated Justices of the Courts of Civil Appeals.

Respectfully submitted,

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APPENDIX A.

Excerpts from Appeal Papers in Record.

1. From appellant's petition for appeal:

"Considering itself aggrieved by the final judgment in the above entitled cause, entered on October 30, 1935, by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein the Supreme Court of Texas, on October 6, 1936, denied appellant's petition for a writ of error and, on December 30, 1936, overruled appellant's motion for rehearing thereon, and wherein the Chief Justice of said Court of Civil Appeals, on January 7, 1937, declined to allow an appeal to the Supreme Court of the United States, United Gas Public Service Company, appellant in said Court of Civil Appeals, plaintiff-in-error in seeking review by the Supreme Court of Texas, and now appellant in this appeal from said judgment, prays that an appeal may be allowed to the Supreme Court of the United States herein for the reasons specified in the Assignment of Errors hereinafter set out and for an order fixing the amount of the bond thereon. * * *

"The Court of Civil Appeals, by its judgment entered October 30, 1935, (from which judgment this appeal is taken), reformed the judgment below so to enforce the order from its effective date, (January 1, 1932,) and, as so reformed, affirmed the judgment below. This judgment appellant attacked, first by motion for rehearing in the Court of Civil Appeals, and then by petition for writ of error seeking a discretionary review thereof by the Supreme Court of Texas and by motion for rehearing in that court, both said motions being overruled and said petition being denied, all with-

out opinion, the only opinion in the case by any court being that of the Court of Civil Appeals entered October 30, 1935. * * *

"For which errors appellant, United Gas Public Service Company, prays that said judgment entered in the above entitled cause by said Court of Civil Appeals on October 30, 1935, be reversed, and that a judgment be rendered in favor of appellant and for costs."

2. Appellant's assignment of errors:

Each of appellant's assignments filed in connection with and as a part of its petition for appeal, numbered 1 to 13, inclusive, starts off in the following form:

"The Court of Civil Appeals erred" etc.

3. From order allowing appeal and fixing security for costs, drawn by appellant and signed by Mr. Associate Justice Cardozo, January 16, 1937:

"United Gas Public Service Company, appellant in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, on October 30, 1935, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

IT IS NOW HERE ORDERED that an appeal be and the same is hereby allowed to the Su-

preme Court of the United States from the Court of Civil Appeals for the Third Supreme Judicial District of Texas in the above entitled cause, as provided by law, and it is further ordered that the clerk of said Court of Civil Appeals shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days from this date;"

4. From the citation in this cause, prepared by appellant and signed by Mr. Justice Cardozo, on January 16, 1937:

"You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C., within forty days from the date hereof, pursuant to an appeal filed in the office of the clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein United Gas Public Service Company is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against said appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf."

5. From appellant's statement as to the jurisdiction on appeal filed in the Court of Civil Appeals in accordance with this Court's Rule No. 12:

"Pursuant to paragraph 1, Rule 12 of the Supreme Court of the United States, as amended March 2, 1936, United Gas Public Service Company, appellant in this appeal from a final judgment entered in the above cause by said Court

of Civil Appeals, respectfully shows the following in support of the jurisdiction of the Supreme Court of the United States to review the aforesaid cause on appeal. * * *

"The judgment sought to be reviewed is the judgment of the Court of Civil Appeals for the Third Supreme Judicial District of Texas entered October 30, 1935, in cause numbered 8176 and styled *United Gas Public Service Company, appellant v. State of Texas, et al,* appellees, * * *

"Pertinent sections of Art. 1728, Revised Civil Statutes of Texas, 1925, are:

" 'Appellate jurisdiction—The Supreme Court shall have appellate jurisdiction coextensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

1. * * *
2. * * *
3. Those involving the construction or validity of statutes necessary to a determination of the case.
4. * * *
5. Those in which the Railroad Commission is a party.
6. * * *

"In all cases where the judgment of the court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; * * *'

"Pertinent provisions of the Texas Statutes governing review of decisions of Courts of Civil Appeals by the Supreme Court of Texas are:

" 'Art. 1729.—Writ of error or certificate.—All causes mentioned in the preceding article (1728) may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, * * *

" 'Art. 1740.—Petition for writ of error.—A writ of error before the Supreme Court may be applied for by petition addressed to said Court and the petition shall contain such other requisites as may be prescribed by the Supreme Court; * * *

" 'Art. 1742.—Filing.—The petition shall be filed with the clerk of the Court of Civil Appeals within thirty days from the overruling of the motion for rehearing.'

"Appellant's petition applying for writ of error in this cause was filed with the clerk of the Court of Civil Appeals the 7th day of February, 1936. This petition, accompanied by the record, was filed forthwith in the Supreme Court of Texas and became Application No. 21776 on the docket of that court. The application was denied by the Supreme Court October 6, 1936.

"Motion for rehearing upon action of the Supreme Court of Texas in denying application for writ of error is not covered by the statutes of Texas, but is provided for in Rule No. 4 of the Rules of the Supreme Court of Texas, pertinent provisions of such Rules being as follows:

" 'A motion for rehearing of an application for writ of error is not a matter of right, but in case such motion shall be filed within fifteen days af-

ter the refusal of the application and before the court shall adjourn for the term, the court will consider the same if it be based upon a ground not embraced in the application or contains the citation of authorities not before cited. * * *'

"Appellant's motion for rehearing upon the action of the Supreme Court of Texas in refusing its application for writ of error was filed 22nd day of October, 1936, and overruled 30th day of December, 1936.

"Under Sec. 344(a), Title 28, United States Code, the judgment of the Court of Civil Appeals entered October 30, 1935, became, at the time the Supreme Court of Texas overruled appellant's motion for rehearing, a final judgment or decree in this suit in the highest court of the state of Texas in which a decision in this cause could be had.

"Appellant's application for appeal from this judgment to the Supreme Court of the United States was presented to the Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas on January 5, 1937, and by him refused on January 7, 1937; and was presented to Honorable Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States on January 15th, 1937. * * *

"The opinion of the Court of Civil Appeals entered October 30, 1935, (unofficially reported 89 S. W. (2) 1094) is attached hereto as Appendix "A"; and the opinion of the Railroad Commission of Texas entered June 13, 1933 (unofficially reported 2 P. U. R. (N.S.) 503) is attached hereto as Appendix "B". No other opinion was entered by the Court of Civil Ap-

peals, and no opinions have been entered either by the trial court or by the Supreme Court of Texas.

"The above and foregoing is presented by United Gas Public Service Company, together with its petition for the allowance of an appeal in this case to the Supreme Court of the United States, as its separate typewritten statement, particularly disclosing the bases upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review said final judgment of the Court of Civil Appeals."

6. From appellant's "notice and acknowledgment of service of appellant's praecipes for record," served upon appellees:

"Pursuant to Rule 10, paragraph 2, of the Rules of the Supreme Court of the United States, you are hereby served with one copy for each of you of appellant's praecipe to the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas and to the Clerk of the Supreme Court of Texas, designating portions of the record to be incorporated in the transcript to be made and certified to the Supreme Court of the United States in this appeal."

7. From appellant's "praecipe for transcript to the Clerk of the Supreme Court of Texas," served upon appellees:

"To the Clerk of the Supreme Court of Texas:

"You are hereby requested to make and certify a true copy of the following from the record of the proceedings of the Supreme Court of Texas upon the application of United Gas Public Service Company for writ of error directed to the Court of Civil Appeals for the Third Supreme Judicial District of Texas in cause No. 8176:

1. Statement from your records showing the date that said petition for writ of error and record were received and filed, and that said proceeding became No. 21,776 upon Application Docket of the Supreme Court of Texas.

2. The copies of the orders of the Court of Civil Appeals accompanying said record.

3. From the petition for writ of error of United Gas Public Service Company, the opening paragraph, and the following numbered assignments of error: 1-15, 17-18, 21, 23, 26, 28-33, 35-37, 39-42, 45-51, 56, 58-59, 62-63, 66-67, 71, 73-74.

4. The order of the Supreme Court of Texas entered October 7, 1936, refusing said application for writ of error, with your endorsement showing that no opinion was entered in connection therewith.

5. From the motion for rehearing filed by United Gas Public Service Company, the opening paragraph, the paragraphs stating the grounds of the motion, and the prayer, with your endorsement showing the date of filing and that said motion became No. 12,899 on the Motion Docket of the Supreme Court of Texas.

6. The order of the Supreme Court of Texas entered December 30, 1936, overruling said motion No. 12,899, with your endorsement showing that no opinion was entered in connection therewith.

7. This praecipe, and notice and acknowledgment of service thereof.

8. Your certificate, including therein your statement as to when the record was returned to the Court of Civil Appeals."

8. From appellant's "praecipe for transcript to the Clerk of the Court of Civil Appeals," served upon appellees:

> "You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States, pursuant to an order of appeal allowed on January 16th, 1937, in the above entitled cause by Mr. Justice Cardozo, and to include in such transcript of record the following from the record on file in this cause: * * *"
>
> "E. 1. Include the transcript of proceedings in the Supreme Court of Texas in this cause, which transcript appellant has requested from the Clerk of said Court."

9. Each of the above mentioned appeal papers, prepared by appellant, and also the appellant's "notice to appellees under Rule 12," was endorsed as follows:

"APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS."

APPENDIX B.

ACT OF 1892

Section 1. Be it enacted by the Legislature of the State of Texas; That Articles, Numbers 1002, 1005, 1011, 1012, 1014, 1017, 1019, 1023, 1024, 1025, 1033, 1039, 1043, 1044, 1049, 1050, 1056, 1057,

1058, 1060, Title 39, of the Revised Statutes of Texas be and the same are hereby so amended as to read as follows:

ARTICLE 1011.

That the Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in all civil cases of which the Courts of Civil Appeals have appellate, but not final, jurisdiction.

ARTICLE 1011a

All causes shall be carried up to the Supreme Court by writs of error issuing from the Supreme Court to the Courts of Civil Appeals upon final judgment and not on judgments reversing and remanding causes except in the following cases, to-wit:

(1) Where the State is a party or where the Railroad Commissioners are parties.

(2) Cases which involve the construction and application of the Constitution of the United States or of the State of Texas or of an Act of Congress.

(3) Cases which involve the validity of a Statute of the State.

(4) Cases involving the title to a state office.

(5) Cases in which a Civil Court of Appeals overrules its own decisions or the decision of another Court of Civil Appeals or of the Supreme Court.

(6) Cases in which the judges of any Court of Civil Appeals may disagree.

(7) Cases in which any two of the Courts of Civil Appeals may hold differently on the same question of law.

(8) When the judgment of the Court of Civil Appeals reversing a judgment practically settles the case, and this fact is shown in the petition for writ of error.

ARTICLE 1011b.

Any party desiring to sue out a writ of error before the Supreme Court, shall present his petition to said Court stating the names and residences of the parties adversely interested, with a brief statement of the nature of his case and the ground upon which the writ of error is prayed, and it must appear that the error complained of arose upon questions of law, the determination of which were necessary to the decision of the cause in the Court of Civil Appeals, and that said questions was (were) properly presented to said Court, and it must further appear that the Supreme Court would have jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the Supreme Court. The petition must be accompanied with a certified copy of the conclusions of law and fact filed in the cause by the Court of Civil Appeals, with the opinions thereof, together with a certified copy of the judgment in the trial court and of the bond given in the lower court, if any, and if Plaintiff in Error has given no bond, then the Supreme Court in granting the writ shall specify what bond shall be given, and the Plaintiff in Error shall file said bond in the trial court to be approved by the clerk of said

court, and a certified copy thereof shall be at once transmitted to the Supreme Court, and upon the filing of said certified copy, the clerk of the Supreme Court shall issue citation in error as may be prescribed by the rules of the Supreme Court.

ARTICLE 1011c.

If it shall appear to the Supreme Court from an inspection of the petition and record that there is error in said judgment of the Court of Civil Appeals, it shall grant a writ of error returnable in thirty days, in such manner as may be prescribed by said Court.

ARTICLE 1057.

Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by Article 1049, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on the receipt of the mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases.

Approved April 13, 1892.

APPENDIX C.

ACT OF 1913

SUPREME COURT—DEFINING ORIGINAL AND APPELLATE JURISDICTION

H. B. NO. 117. CHAPTER 55.

An Act to amend Articles 1521, 1522, 1543, 1544, and 1526 of the Revised Civil Statutes of 1911

defining the original and appellate jurisdiction of the Supreme Court, and regulating practice therein.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Articles 1521, 1522, 1543, 1544, and 1526 of the Revised Civil Statutes of 1911 of said State be so amended as hereafter to read as follows:

ARTICLE 1521.

The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to questions of law arising in civil causes in the Courts of Civil Appeals in the following cases when same have been brought to the Courts of Civil Appeals by writ of error, or appeal, from final judgments of the trial courts:

(1) Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

(2) Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

(3) Those involving the validity of Statutes.

(4) Those involving the revenue laws of the State.

(5) Those in which the Railroad Commission is a party.

(6) Those in which, by proper application for writ of error, it is made to appear that the Court of

Civil Appeals has, in the opinion of the Supreme Court, erroneously declared the substantive law of the case, in which case the Supreme Court shall take jurisdiction for the purpose of correcting such error.

ARTICLE 1522.

All causes mentioned in Article 1521 may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals as elsewhere provided, except those mentioned in subdivision 6, which must be presented by application for writ of error.

ARTICLE 1543.

If upon inspection of the petition for writ of error and the record of the cause, it shall appear that a Court of Civil Appeals has failed to file conclusions of fact, or has not complied with the requirements of the law in filing such conclusions, and that such conclusions are necessary to enable the Supreme Court properly to determine the rights of the parties, the courts may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals, with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court.

ARTICLE 1544.

If, upon examination of the petition for writ of error, the Supreme Court shall find the case to be one of which it may take jurisdiction, and that there is such a difference of opinion among the judges of the court from which the cause shall come, or such a difference between the decision brought in question and a

decision of another court, as is specified in Article 1521, or that the question involving the validity of a Statute was erroneously decided, or that, in a case involving the revenue laws of a State, or to which the Railroad Commission is a party, any question of law material to its correct decision was erroneously decided, or that such an error is shown as is contemplated by subdivision 6 of Article 1521, the court shall grant the writ for the purpose of deciding the question as to which the difference exists, or of correcting the erroneous decision and rendering the judgment in which a correct decision thereof shall result.

ARTICLE 1526.

The Supreme Court, or any justice thereof, shall have power to issue writ of habeas corpus as may be prescribed by law; and the said court, or the justice thereof, may issue writs of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said court; and said court may issue writs of quo warranto or mandamus agreeable to the principles of law regulating such writs against any district judge, or Court of Civil Appeals or judge of a Court of Civil Appeals, or officer of the State Government, except the Governor of the State.

Section 2. Be it further enacted that this Act shall take effect on the 1st day of July, 1913, and that it shall not affect any business which may be before the Supreme Court at that time, either as to cases granted or as to application for writs of error theretofore filed, or as to motion then pending or thereafter filed with reference to any of such business; provided, that if a

judgment of the Court of Civil Appeals shall be reversed and the cause remanded, such case shall thereafter proceed under the provisions of this bill.

(NOTE:—H. B. No. 117 passed the House of Representatives March 15, 1913, but no vote given; and passed the Senate March 26, 1913, but no vote given.)

Approved March 28, 1913.
Takes effect 90 days after adjournment.

APPENDIX D.
ACT OF 1917

JURISDICTION OF THE SUPREME COURT

H. B. NO. 38 CHAPTER 75

An Act to amend Articles 1521, 1522, 1543, 1544, and 1526 of the Revised Civil Statutes of 1911 as amended by the Acts of the Thirty-third Legislature, approved March 28, 1913, defining the original and appellate jurisdiction of the Supreme Court, and regulating the practice therein.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Articles 1521, 1522, 1543, 1544 and 1526 of the Revised Civil Statutes of 1911 of this State as amended by the Act of the Regular Session of the Thirty-third Legislature, approved March 28, 1913, be so amended as to hereafter read as follows:

ARTICLE 1521.

The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to all questions of law arising in cases of which the Courts of Civil Appeals have appellate

jurisdiction in the following cases when same have been brought to the Courts of Civil Appeals by writ of error or appeal from final judgment of trial courts:

(1) Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

(2) Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

(3) Those involving the construction or the validity of Statutes.

(4) Those involving the revenue laws of the State.

(5) Those in which the Railroad Commission is a party.

(6) In any other case in which it is made to appear that an error of law has been committed by the Court of Civil Appeals of such importance to the jurisprudence of the State, as in the opinion of the Supreme Court requires correction, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by Statute. Upon the showing of such an error the Supreme Court may, in its discretion, grant a writ of error for the purpose of revising the decision upon such question alone, and of conforming its judgment to the decision thereof made by it. Until otherwise provided by rule of the Supreme Court the application for writ of error in such a case shall immediately after the title of the cause and the address

to the court, concisely state the question decided by the Court of Civil Appeals in which error is asserted, in order that the Supreme Court may at once see that such a question is presented as is contemplated by this provision. This shall be followed by only such brief and general statement as may be necessary to show that the question was involved in the cause and in the decision of the Court of Civil Appeals. More than one question may be presented in the same application, all being stated in order as above stated.

ARTICLE 1522.

All causes mentioned in Article 1521 may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, as elsewhere provided, but the Court of Civil Appeals may certify any question of law arising in any of the above cases at any time they may choose so to do, whether before or after decision of the case in said court.

ARTICLE 1543.

If upon inspection of the petition for writ of error and the record of the cause it shall appear that a Court of Civil Appeals has failed to file conclusions of fact, or has not complied with the requirements of the law in filing such conclusions, and that such conclusions are necessary to enable the Supreme Court properly to determine the rights of the parties, the court may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court.

ARTICLE 1544.

If, upon examination of the petition for writ of error the Supreme Court shall find the case to be one of which it may take jurisdiction, the Court shall grant or refuse the writ of error or answer the questions certified by the Court of Civil Appeals, as the case may be.

ARTICLE 1526.

The Supreme Court, or any Justice thereof, shall have power to issue writ of habeas corpus as may be prescribed by law, and the said Court, or any Justice thereof, may issue writs of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said Court, and said Court may issue writs of quo warranto or mandamus, agreeable to the principles of law, regulating such writs against any district judge or Court of Civil Appeals or judge of the Court of Civil Appeals, or officer of the State Government, except the Governor of the State.

Section 2. Be it further enacted that this Act shall take effect on the first day of July, 1917, and that it shall not affect any business which may be before the Supreme Court at that time, either as to the cases in which application for writs of error have been granted or as to applications for writs of error theretofore filed, or as to matters then pending or thereafter filed with reference to any of such business; provided that if a judgment of the Court of Civil Appeals shall be reversed and the cause remanded such case shall thereafter proceed under the provisions of this Act.

Approved March 15, 1917.

Takes effect July 1, 1917, as provided by law.

APPLICATIONS FOR WRITS OF ERROR TO THE SUPREME COURT.

H. B. NO. 39 CHAPTER 76

An Act to relieve the crowded condition of the dockets of the Supreme Court by further regulating the mode in which and the conditions on which judgments of the Courts of Civil Appeals may be brought before the Supreme Court for revision, granting additional powers to the Chief Justice and the Associate Justices of the Supreme Court and of the Courts of Civil Appeals, as incidental to the offices held by them; providing for compensation of certain Justices of the Courts of Civil Appeals while acting as herein provided, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. It is made a condition of obtaining a review upon writ of error, by the Supreme Court, of any final judgment of any Court of Civil Appeals, that good cause therefor first be shown in an application for such writ, as heretofore required, the sufficiency of such cause to be determined as herein provided.

Section 2. Provided the Chief Justice of the Supreme Court or any two of the Justices thereof are empowered as soon as this Act shall become a law, by a writing to be recorded in the minutes of the Supreme Court, to designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. The powers given to the Chief Justice, or Associate Justices, of the Supreme Court, may be exercised from time to time as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of

Civil Appeals may be changed as often as may be found advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals, such action to be in writing and recorded, as before; and not more than one Justice shall be designated to serve at any one time from any one of these Courts.

Section 3. It shall be the duty of the Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, to assemble together at the Capitol of the State and to take up, consider and act upon such applications for writs of error, whether then pending or afterwards filed as may be referred to them by Supreme Court or any two Justices thereof, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court heretofore prevailing; and such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of applications, as are sanctioned by such practice.

Section 4. The granting of an application shall admit the cause into the Supreme Court to be proceeded with by that Court as heretofore provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated Justices in the same way as such motions to the Supreme Court have been heretofore allowed; provided, that the refusal or dismissal of any application shall not be regarded as a precedent or authority in any other cause; and, provided, that no one of such Justices shall par-

ticipate in acting upon an application in a cause decided during his incumbency by the court of which he is a member.

Section 5. The Supreme Court shall still have power to act upon applications for writs of error, when deemed expedient, and the same power is hereby conferred upon the Justices of that Court, action by any two of whom shall be sufficient. And in any cause in which the Judges of the Courts of Civil Appeals shall have disagreed, or which the Court of Civil Appeals shall have held differently upon the same question of law the holding of another Court of Civil Appeals or of the Supreme Court, or shall have declared void a Statute of the State, the application for writ of error shall be passed upon by the Supreme Court.

Section 6. The powers herein conferred upon the Chief Justice and Associate Justices of the Supreme Court and of the Courts of Civil Appeals are declared to be incidental to the offices held by them respectively.

Section 7. Justices of the Courts of Civil Appeals shall be entitled to have their actual and necessary expenses incurred in going to, remaining at and returning from the Capitol in the discharge of the additional duties hereby imposed upon them, paid out of the State Treasury from warrants drawn by the Comptroller, based upon itemized accounts of such expenses, verified by the certificate or affidavit of the claimant.

Section 8. The great delays, often amounting to a denial of justice, in the disposition of business in the Supreme Court, owing to the accumulation of more work than can be done by the Judges thereof, create an imperative public necessity and an emergency

for the suspension of the constitutional rule requiring bills to be read on three several days in each House, and for putting this Act in force from and after its passage, and it is accordingly so enacted.

Approved March 16, 1917.

Became a law March 15, 1917.

* * * * *

ARTICLE 1748, R.C.S. 1925:

The Chief Justice of the Supreme Court or any two Justices thereof may, by a writing recorded in the minutes of the Supreme Court, designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. Such powers may be exercised from time to time in the same manner as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Civil Appeals may be changed as often as may be advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals. Not more than one Justice shall be designated to serve at any one time from any one of these courts.

ARTICLE 1749, R.C.S. 1925:

The Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, shall assemble together at the State Capitol and take up, consider and act upon applications for writs of error as may be so referred to them, by granting, refusing or

dismissing the same in accordance with the practice of the Supreme Court; and then such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of the application.

ARTICLE 1750, R.C.S. 1925:

The granting of an application shall admit the cause into the Supreme Court to be proceeded with by the Court as provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated Justices in the same way as such motions to the Supreme Court have been heretofore allowed. The refusal or dismissal of any application shall not be regarded as a precedent or authority.

ARTICLE 1751, R.C.S. 1925:

No one of such Justices shall participate in acting upon an application in a cause decided during his incumbency by the court of which he is a member.

ARTICLE 1752, R.C.S. 1925:

The Supreme Court shall still have power to act upon applications for writs of error, when deemed by it expedient. In any cause in which the Judges of the Courts of Civil Appeals shall have disagreed or shall have declared void a statute of the State, the application for writ of error shall be passed upon by the Supreme Court.

APPENDIX E.

ACT OF 1927

FIXING JURISDICTION OF SUPREME COURT

S. B. No. 7 CHAPTER 144

An Act to amend Article 1728 of Chapter 3, of Title 37 of the Revised Civil Statutes of Texas of 1925, relating to and better defining and fixing the appellate jurisdiction of the Supreme Court of Texas, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Article 1728 of Chapter 3 of Title 37 of the Revised Civil Statutes of Texas, be, and the same is hereby amended so as to read as follows:

Article 1728. Appellate Jurisdiction.—The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

(1) Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

(2) Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

(3) Those involving the construction or validity of statutes necessary to a determination of the case.

(4) Those involving the revenues of the State.

(5) Those in which the Railroad Commission is a party.

(6) In any other case in which it is made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute.

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; in all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it shall dismiss the case for want of jurisdiction.

Provided further that in cases of conflict named in Subdivision 2 above, the Supreme Court may, in its discretion refuse the writ of error where the court is in agreement with the decision of the Court of Civil Appeals in the case in which the application is filed; and in cases of such conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse and remand the same on the application for writ of error.

Section 2. The fact that the language of the present statute relating to the appellate jurisdiction of the Supreme Court of this State is, in many respects, vague and indefinite, rendering it frequently uncertain as to what constitutes the appellate jurisdiction of the Supreme Court of Texas, the importance of having the

present statute upon this subject amended so as to better define what such jurisdiction is, the approaching close of the present session of the Legislature and the crowded condition of the calendar of both Houses, creates an emergency and an imperative public necessity which requires that the Constitutional rule requiring bills to be read on three several days in each House be suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Approved March 25, 1927.

Effective (90) ninety days after adjournment.

APPENDIX "F"

Commission of Appeals
Section A
No. 9

The Gammel Statesman Publishing Co., et al.,
Plaintiffs in Error,

vs.

From Travis Co.
3rd Dist.

Ben C. Jones & Co.,
Defendants in Error.

The judgment of the trial court in this cause was affirmed by the Court of Civil Appeals for the Third Supreme Judicial District on May 24, 1911. 141 S.W., 1048. On June 6, 1911, defendants in error filed their original motion for rehearing in said cause. The court adjourned without acting on this motion, but over-ruled same at its next term on December 6, 1911. On January 4, 1912, defendants in error filed their application for writ of error to the Supreme Court

and the same was denied on February 7, 1912. On February 24, 1912, defendants in error filed in the Supreme Court their motion for rehearing on the refusal of their application for writ of error and said motion was over-ruled on February 28, 1912. On March 25, 1912, defendants in error filed in the Supreme Court an application for mandamus against the judges of the Court of Civil Appeals for the Third Supreme Judicial District to require the latter court to grant a rehearing and reopen the case, and this was refused on April 3, 1912. Defendants in error next filed in the Supreme Court an application for mandamus against the Judge of the Trial Court and same was refused. On May 28, 1912, defendants in error filed in the Court of Civil Appeals a motion styled "motion to vacate judgment". This motion was refused by the court on October 12, 1912. On October 23, 1912, defendants in error filed in the Court of Civil Appeals what they termed "motion for rehearing of motion to vacate judgment" and this was overruled on January 8, 1913. On January 15, 1913, defendants in error filed in the Court of Civil Appeals a motion designated "supplemental motion for rehearing of motion to vacate judgment". The Court of Civil Appeals on February 19, 1913 granted this motion and entered judgment, setting aside its former judgment rendered May 24, 1911, affirming the judgment of the District Court and all other orders and decisions made by it subsequent to that time and reversed and remanded the cause for a new trial.

Plaintiffs in error contend that said court was without authority to grant the motion, because same was filed and acted upon at a subsequent term of the court

to that at which its original judgment was rendered and after the Supreme Court had denied a writ of error in said cause. This is the only question presented for review.

We conclude, after a careful examination of the motion in connection with the record, that while not so designated, it is in substance a motion for rehearing within the meaning of that term as used in articles 1633 and 1641, Revised Statutes, 1911. The Court of Civil Appeals so held in granting the motion. 156 S.W., 317.

The motion was not filed within the time allowed for the filing of motions for rehearing and was not acted upon at the term of the court at which the original judgment was rendered. This being true, the court was without authority to take any action on the motion and the judgment entered granting the motion and setting aside and vacating the original judgment rendered by said court in said cause and reversing and remanding the case to the trial court, must, we think, be held to be void and of no effect. Articles 1633 and 1641, R.S. 1911. McGhee vs. Romatka, 92 Texas, 241. The original judgment of affirmance stands just as if the motion had not been filed.

It is contended that under the holding in the case of McGhee vs. Romatka, supra, this court is without jurisdiction to review the action of the Court of Civil Appeals in granting the motion.

The motion in the case before us was filed and acted upon by the Court of Civil Appeals after the Supreme Court had refused a writ of error in said cause and by such action affirmed the original judgment of the Court,

of Civil Appeals and that of the trial court. The judgment of the Court of Civil Appeals entered in granting the motion not only set aside and vacated its judgment rendered at a former term, but also in effect set aside and vacated the judgment of the Supreme Court in denying the writ of error in said cause. It is well settled that when the jurisdiction of the Supreme Court attaches, the court has full control of the cause and can make such orders concerning it as may be necessary to preserve the rights of the parties and enforce its mandates. Its jurisdiction continues until the case is fully determined by the court and its judgment is completely executed by the court below. For the purpose of enforcing its mandates, it may make any order and, if necessary, may resort to the writ of mandamus or any other appropriate writ known to our system of jurisprudence. Wells vs. Littlefield, 62 Texas, 28. The action of the Supreme Court in refusing a writ of error in this cause was binding on the Court of Civil Appeals. The Court of Civil Appeals at the time the motion under review was filed and acted upon was without jurisdiction of the case and had no power to enter any order or judgment therein. To hold otherwise would be to deny to the Supreme Court its power as a court of last resort. The question of the power of the Supreme Court to enforce its own jurisdiction was not before the court in the case of McGhee vs. Romatka.

We are of opinion that the motion to dismiss the application for writ of error should be over-ruled and that the order and judgment entered by the Court of Civil Appeals setting aside and vacating its former

judgment and reversing and remanding the cause for a new trial should be held to be void and of no effect.

Strong

Judge.

The judgment recommended by the Commission of Appeals is adopted and will be entered as the judgment of the Supreme Court. We approve the holding of the Commission on the question discussed.

Nelson Phillips

Chief Justice.

December 11th, 1918.

(ENDORSED)

No. 9 COMMISSION OF APPEALS Section A. No. 2572 The Gammel Statesman Publishing Company, et al., Plaintiffs in Error vs. Ben C. Jones & Co., Defendant in Error. OPINION. Order of Crt. of Civ. App. App. vacating its original judgment remanding the cause to the Dist. Crt. is reversed and the cause is remanded to the Crt. of Civ. App. for the execution of its original judgment. Filed in Supreme Court Dec'r. 11. 1918. F. T. Connerly, Clk. By H. L. Clamp, Depty.

Strong, Judge.

I, S. A. PHILQUIST, Clerk of the Supreme Court of Texas, hereby certify that the attached and foregoing five typewritten pages contain a true and correct copy of the opinion of the Commission of Appeals, Section "A", in the above styled and numbered cause, which opinion was adopted by the Supreme Court on the 11th day of December, 1918, as the same appears on file in my office.

Witness my hand and the seal of said Court at the City of Austin, this, the 5th day of April, 1937.

S. A. PHILQUIST

(Seal)

Clerk of the Supreme Court of the State of Texas.

APPENDIX G.

ARTICLE 1767, R. C. S. TEXAS, 1925.

"Whenever the Supreme Court shall affirm a judgment or decree of a Court of Civil Appeals, it shall render such judgment or decree as should have been rendered by the Court of Civil Appeals, and shall render judgment against the plaintiff in error and the sureties, on his appeal or supersedeas bond, for the performance of said judgment or decree, and shall make such disposition as to the costs as they may order."

ARTICLE 1768, R. C. S. TEXAS, 1925.

"Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding article, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the

mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases."

Rule 4, Supreme Court of Texas.

When the application shall have been filed for a period of ten days, if the court shall determine to refuse the same, then, whether the defendant has answered or not, the clerk of the court will retain the application, together with the transcript and accompanying papers, for fifteen days, from the day of rendition of the judgment refusing the writ. At the end of that time, if no motion for rehearing has been filed or upon the overruling or dismissal of such motion, in case one has been filed, the clerk of this court shall transmit to the Court of Civil Appeals to which the writ of error is sought a certified copy of the orders of this court denying such application and of the order overruling the motion for a rehearing thereof, and shall return the papers which belong to that court to the clerk thereof, but shall retain the petition for writ of error. A motion for rehearing of an application for writ of error is not a matter of right, but in case such motion shall be filed within fifteen days after the refusal of the application and before the court shall adjourn for the term, the court will consider the same if it be based upon a ground not embraced in the application or contains the citation of authorities not before cited. The presentation of any point or points presented in the application without urging some new argument or citing some new authority will be deemed a sufficient ground for dismissing the motion.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

NO. [redacted] 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

versus

STATE OF TEXAS, ET AL.,
Appellees

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLEES' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS

WILLIAM MCCRAW,
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State of Texas, et al.

ELLIOTT PRINTING CO.—*Austin*

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

NO. 807

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

versus

STATE OF TEXAS, ET AL.,
Appellees

APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

APPELLEES' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS

To the Honorable Supreme Court of the United States:

Believing that it will lighten the labors of this Court, we reply briefly to some of the contentions advanced by Appellant.

I.

In reply to the contention that, in deciding whether the appeal has been taken from "the highest court of a State in which a decision of the suit could be had,"

this Court will limit itself strictly to the form of the order of the Supreme Court of Texas in refusing the writ of error, and will not look beyond, to the legal effect attached to that refusal by the State law of Texas:

In the first division of its brief, Appellant contends that the case of *Norfolk & Suburban Turnpike Co. vs. Virginia*, 225 U. S. 264, 267-269, 56 L. Ed. 1082, and other cases, applying the doctrine of that case, cited in Appellees' original brief on pages 4-5, establish the rule that in order to sustain an appeal from the Supreme Court of Texas, this Court would require that the Supreme Court of Texas, in addition to entering its usual order refusing the application for writ of error, go further and recite that it has actually exercised its appellate jurisdiction over the case and has considered and passed upon the merits, and order explicitly in the face of the record that the judgment of the Court of Civil Appeals shall be and is thereby affirmed. It is to be borne in mind that even if the Supreme Court of Texas had done those things in this case, it would not have added one cubit to the stature of the order which it actually did enter; for we have already shown, and will demonstrate even more plainly herein, that when the Supreme Court of Texas enters an order refusing a writ of error in a case properly appealable to it by that exclusive mode of appeal, the State law of Texas attaches to that order the necessary legal consequence that the Supreme Court of Texas has thereby actually exercised its appellate jurisdiction over the cause and has affirmed same upon its merits in such way that both the judgment and the opinion of the Court of Civil

Appeals are thereby adopted and made those of the Supreme Court of Texas itself; and that, although a portion of the record is thereupon remitted to the Court of Civil Appeals, whence the mandate lawfully issues for the enforcement of the judgment, that mandate is in reality a process issued through the lawful agency of the Court of Civil Appeals but for the enforcement of a judgment of the Supreme Court of Texas itself; and that the last mentioned Court, in all situations where such becomes necessary, will intervene with its own appropriate process for the enforcement of such judgment as its own.

Section 237 of the Judicial Code (U.S.C, Title 28, Section 344a) expressly and mandatorily requires that an appeal from a State court, in order to be sustainable in this Court, must be prosecuted from "the highest court of a State in which a decision of the suit could be had." Thus, the State court from whence the appeal is to be prosecuted is definitively, exclusively and mandatorily fixed and identified. As we expected, Appellant has made the most of the contention that the practice of appealing from the Courts of Civil Appeals in these circumstances is correct because it has been countenanced by this Court inadvertently as proper for a great many years, and in a great many cases. The argument is that a practice which originally violated the mandatory requirements of the Federal statute governing this Court's jurisdiction has been sanctified into propriety by long usage. But the Federal law cannot thus be amended by ancient custom. The requirement of the Federal statute is plain and inexorable that the appeal must be prosecuted from the highest court of a State in

which a decision of the suit could be had; and if the condition is not fulfilled then this Court has no jurisdiction. The condition cannot be fulfilled by any *presumption* that the appeal has come from the correct court, when the actual fact is shown to be that it has not come from such court at all, but has come from an intermediate appellate court whose judgment has been affirmed on its merits by the action of "the highest court of a State in which a decision of the suit could be had."

No mere failure of the Supreme Court of Texas to write into its order, or into an opinion, expressly those things which the law of the State attaches as a necessary legal consequence of its refusal of the writ of error in this case (whether such failure was attributable to any fault of Appellant or not) can serve to amend, or waive for Appellees, the mandatory provision of the Federal law governing this Court's jurisdiction, as to which court the appeal is to come from. If the appeal has not been prosecuted from that court as matter of actuality (and, hence, if the Appellant has failed to discharge its duty of presenting to this Court a record which affirmatively reflects that the appeal has been taken from such court; and more especially, if it be affirmatively shown either by Appellant or Appellee or both that the appeal has not been prosecuted from that court) then under the rule announced in *Norfolk & Suburban Turnpike Co. vs. Virginia, supra,* and other decisions of this court following and applying that rule, the penalty which the Appellant must suffer is the *dismissal of its appeal for want of plainly demonstrated jurisdiction.*

This Honorable Court has always guarded its jurisdiction with jealousy, and instead of indulging presumptions in favor of, has actually indulged all presumptions against, its jurisdiction until such be plainly demonstrated *by appellant*. If, as Appellant urges, this is a mere matter of the present record *failing to reveal* that the Supreme Court of Texas was the proper court from which to appeal, then it does not follow that the Court of Civil Appeals was the proper Court, nor that this Court is justified in *presuming* that it was. This is no matter where *presumption* can take the place of *actuality*. The jurisdiction depends upon a condition, and if Appellant fails to show that the condition is met, or if it be affirmatively shown by anyone that it has not been met, in the one case jurisdiction has not been shown, and in the other there is no jurisdiction. Yet that is exactly what the Appellant is asking this Court to do. If, as Appellant contends, in order that an appeal from the Supreme Court of Texas may be sustainable here it is necessary for anyone to present a record affirmatively reflecting that the Supreme Court of Texas had actually *exercised jurisdiction and affirmed* the cause upon the merits, then that duty plainly devolved upon Appellant and not upon Appellees. Under Appellant's own contention, therefore, the duty devolved upon it to request the Supreme Court of Texas, if necessary, to go further than merely entering an order refusing its application, and to recite affirmatively the actual exercise of jurisdiction and affirmance upon the merits.

Notwithstanding the fact that Appellees were under no duty to do so, they have, in their original motion

and argument, offered that if this Court is in doubt as to what legal consequences attach under the State law of Texas to the refusal of application for writ of error by the Supreme Court of Texas, that they, Appellees, will themselves file a motion with the Supreme Court of Texas asking it, in response to the invitation of this Court, to make and enter even yet its supplemental opinion and order meeting the requirements which Appellant says must be met in order to show that the case is properly appealable from the Supreme Court of Texas. To this offer, Appellant replies that it is not competent for the record to be augmented by any supplemental opinion or order of the Supreme Court of Texas. (See Appellant's brief, page 22, where Appellant cites authorities claimed to support the proposition that this Court will not permit the making and filing as a part of the record in this Court supplemental opinions or orders of the State court clarifying the State law and the State court's judgment and aiding this Court in deciding whether it has jurisdiction.) Our reply to that argument is a citation to the case of *Bain Peanut Co. of Texas vs. Pinson and Guyger*, 282 U. S. 811, 75 L. Ed. 726; 282 U. S. 499, 75 L. Ed. 482, where an appeal to this Court was first dismissed for apparent want of jurisdiction, and then with this Court's express approval the Appellant was permitted to, and did, obtain the entry of a supplemental clarifying opinion by the Supreme Court of Texas, after the filing of which, in this Court, the appeal was reinstated and disposed of upon its merits.

Our understanding is that this Court has always reserved unto itself the privilege of taking whatever

steps are necessary and appropriate to inquire into and determine the facts and law upon which its jurisdiction depends.

Appellant urges that if the rule for which we contend were established, suitors appellant would have no fixed and definite standard, guide or test by which to determine from which State court they should prosecute their appeals. We submit that this argument is utterly unfounded. Mr. Chief Justice White laid down plainly the principle and test, upon which that question turns, in *Norfolk & Suburban Turnpike Co. vs. Virginia, supra.* The test is that if under the law of the State whence the appeal comes the refusal of writ of error by the highest State court constitutes an actual exercise of jurisdiction and an affirmance of the judgment of the intermediate appellate court upon its merits, then the appeal should be prosecuted from the highest State court; but if such order, under the State law, amounts merely to a refusal to exercise any jurisdiction at all, then the appeal should be prosecuted from the intermediate appellate court. No test could be plainer, more definite, certain, fixed or unmistakable. This Court has never shrunk from the duty of ascertaining, where necessary, what the law of a particular State is; even in cases where the question was attended with difficulty and uncertainty, as it is *not* here. Appellant has at its peril failed to apply the test properly in this case, though it is presumed to know the law of its own State.

The matter resolves itself, therefore, only into a question of *what sources* this Court will look to in

order to determine the effect under the State law of a refusal of writ of error by the highest State court. Will this Court, as Appellant contends, look only narrowly and restrictively to the mere words and form of the order of the Supreme Court of Texas refusing writ of error, and close its eyes to the plainly declared and established law of the State of Texas as evidenced in the statutes and decisions of the highest Court of that State? Or will this Court do what it has always done, and declared that it will continue to do, namely, take judicial notice and knowledge of the law of the State of Texas, and attach the necessary legal consequences thereof to the Texas Supreme Court's order refusing the writ of error? This Court has many times said that in appeals coming here from State courts it will take judicial knowledge of the law of the State as evidenced by its statutes and the decisions of its highest courts where properly called to this Court's attention. *Hanley vs. Donoghue*, 116 U. S. 1, 6, 29 L. Ed. 535; *Berea College vs. Kentucky*, 211 U. S. 45, 56, 53 L. Ed. 81; *Abie State Bank vs. Bryan*, 282 U. S. 765, 778, 75 L. Ed. 690. Yet Appellant asks that this Court repudiate and refuse to apply that rule, restricting its vision and knowledge solely to the strict form of words appearing in the order of the Supreme Court of Texas refusing writ of error, and decline to exercise its knowledge of what the State law of Texas is and what legal effects and consequences of that law necessarily attach to the action of the Supreme Court of Texas in refusing writ of error.

But, Appellant urges, if it had prosecuted its appeal from the Supreme Court of Texas instead of

the Court of Civil Appeals, it would have been compelled to go up only on that portion of the record which remained in the Supreme Court of Texas, after that Court had refused writ of error and remitted a portion of the record back to the Court of Civil Appeals; and it is urged that on the face of that portion of the record there would have been nothing to reflect affirmatively that the Supreme Court of Texas in refusing its writ of error had exercised its appellate jurisdiction and affirmed the case upon its merits; hence, it is urged, its appeal would have been dismissed for want of jurisdiction. And, it is urged further, in order to protect itself against the present motion it would have been compelled to prosecute a double appeal, one from the Supreme Court of Texas and one from the Court of Civil Appeals. It is further urged that it could not properly appeal from the Supreme Court of Texas, because the Court of Civil Appeals is "the court possessed of the record," and that Appellant and this Court would have had no way of bringing up that portion of the record in possession of the Court of Civil Appeals; and, tied in with this contention, is the astounding proposition that this Court would have no way of making its judgment binding upon, and enforcible against, the Court of Civil Appeals.

In view of what Appellant has done in this appeal, we do not understand how it can consistently make any of such contentions. At page 2 of its brief, Appellant states that after the Supreme Court of Texas had finally refused its application for writ of error "the record was returned to the Court of Civil Appeals." If by this it is meant to assert that the entire

record was remitted below, the statement must be corrected. Only a portion of the record which was before the Supreme Court of Texas was under the law required to be, and was actually, remitted to the lower court. A substantial portion thereof, as is reflected by Appellant's brief elsewhere, (pages 10-11) and as reflected by Appellant's praecipe to the Clerk of the Supreme Court of Texas[1], remained in the last mentioned court. That portion consisted of Appellant's application for writ of error, these Appellees' reply thereto, the orders of the Court of Civil Appeals transmitted to the Supreme Court with the record when the application was filed, the motion for rehearing of such application, and the orders of the Supreme Court refusing such application and overruling the motion for rehearing thereof. In the very nature of things Appellant was compelled to, and did, in this appeal direct separate praecipes to the Clerks of the Supreme Court of Texas and of the Court of Civil Appeals[2] in order to bring up the whole record necessary to this appeal. The same procedural steps identically would have been necessary, and would have been equally efficacious, if the appeal had been taken from the Supreme Court of Texas instead of the Court of Civil Appeals. In no event, therefore, can it truthfully be said that the Court of Civil Appeals is the "court possessed of the record" any more than the Supreme Court of Texas. The difference, if any, is only quantitative. *Robertson and Kirkham ("Jurisdiction of the Supreme Court of the United*

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[1]See Appendix A, pages 25-27, Appellees' original brief in support of its motion to dismiss herein.

[2]See reference in foot note 1 above.

States," Sections 44, 281, *and* 361, *note* 68, *page* 747, *and cases cited*) show that in several decisions of this Court it is amply established that "the court possessed of the record" is not necessarily the court from whence appeal should be prosecuted. There is a variety of situations, which have arisen and may arise, where the record or a portion thereof necessary to a review of the case by this Court might be in possion of courts, officials, or persons other than "the highest court of a State in which a decision of the suit could be had," and in every such case this Court has reserved to itself, and has exercised, all necessary and appropriate processes and means to bring before it a complete record necessary to such a review.

If an appeal had been prosecuted from the Supreme Court of Texas in this case, and this Court had rendered its judgment in such appeal, can it be doubted that such judgment would be binding upon both the Supreme Court of Texas and the Court of Civil Appeals whose judgment and opinion the Supreme Court of Texas affirmed?

II.

In reply to Appellant's assertion that under the State law of Texas the refusal of writ of error by the Supreme Court of Texas does not constitute an actual exercise of appellate jurisdiction and an affirmance upon the merits.

Appellant asserts that when an application for writ of error is duly filed with the Supreme Court of Texas it is *"discretionary"* with that Court whether it will review the case upon its merits or not. We

take issue with that contention most vehemently. We assert, and will undertake hereinafter to demonstrate conclusively, that in this case Appellant not only had the privilege of, but has actually asserted its right to and has received, *as of right*, a review of its case upon its merits by the Supreme Court of Texas. Appellant's case is not one of those made final in the Court of Civil Appeals by Article 1821, R.C.S. Texas 1925,[3] and Appellant has so asserted to the Supreme Court of Texas in its application for writ of error found in this record. On the contrary, as was also affirmatively asserted by Appellant in its said application for writ of error, its case falls squarely within the provisions of subdivisions 3, 5 and 6 of Article 1728, R.C.S. Texas 1925 as amended in 1927,[4] which Article and subdivisions thereof Appellant likewise expressly invoked in its application for writ of error filed with the Supreme Court of Texas. Said

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[3]Article 1821. Judgment conclusive on law. The judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from Supreme Court in the following cases to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution, a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute, or cases involving conflicts between decisions of the Courts of Civil Appeals or between a decision of a Court of Civil Appeals and a decision of the Supreme Court.
2. All cases of slander.
3. All cases of divorce.
4. All cases of contested elections of every character other than for State officers, except where the validity of a Statute is questioned by the decision.
5. In all appeals from interlocutory orders appointing receivers of trustees, or such other interlocutory appeals as may be allowed by law.
6. In all other cases as to law and facts, except where appellate jurisdiction is given to the Supreme Court, and not made final in said Court of Civil Appeals. (As amended Acts 1929, 41st Leg., p. 68, ch. 33, §1.)

[4]See Appendix E, pages 43-45, Appellees' original brief in support of its motion to dismiss herein.

Article 1728 expressly confers upon dissatisfied litigants the right of filing with the Supreme Court of Texas their application for writ of error and having the same considered by that Court, *as of right and upon the merits,* in every case falling within any of the classes enumerated in that Article.

Under the plain requirements of that Article, and under the holding in the *Gammel Statesman* case, it is indisputable that Appellant's appeal was reviewed as of right and affirmed upon the merits by the Supreme Court of Texas even though that Court refused writ of error rather than granting it. The reason that statute enjoins upon the Supreme Court of Texas the mandatory duty to take the "short cut" of refusing the writ of error where that Court approves the judgment and opinion of the Court of Civil Appeals is to avoid the unnecessary work of formally granting the writ, transferring the cause from the application docket to the cause docket, in most cases receiving and considering additional briefs, hearing oral argument upon formal submission, doing further legal research, and then terminating the whole useless procedure by merely entering a formal judgment expressly affirming the judgment of the Court of Civil Appeals, and writing an additional opinion paraphrasing the opinion of the Court of Civil Appeals when, upon the petition for writ of error, and upon the record, as presented, the Supreme Court of Texas is of opinion without further briefs, oral argument and legal research that the judgment and opinion of the Court of Civil Appeals are plainly correct; and when under the law the necessary legal effect of a refusal of the writ of error is to place the stamp of

approval and affirmance of the Supreme Court of Texas upon the judgment and opinion of the Court of Civil Appeals. In actual practice, therefore, it will be seen that the Supreme Court of Texas *grants* the writ of error only where upon consideration of the petition therefor and the record, that Court is of opinion that there is error, or probable error, in the *judgment* of the Court of Civil Appeals, requiring reversal or modification. In that case the writ is granted only for convenience of the Supreme Court of Texas in order to enable it to receive the benefit of the additional procedure above outlined, where it seems that such is necessary to enable that Court to rectify palpable error or probable error in the judgment of the Court of Civil Appeals. Where, upon the face of the petition and record, the Supreme Court of Texas is plainly of opinion that the judgment and opinion below are correct, without the need of additional briefs, argument, and research, then it would be vain to go through the additional formal procedure when the same result of affirmance can be reached, *and is required by the statute to be reached*, by a refusal of the writ. Under the Gammel decision, this is as truly an affirmance as in the case of a formally granted writ and a new judgment and opinion. This serves to dispel the illusion of anomaly which the Appellant attempts to create in this Court's mind as to how there can be an affirmance when a writ of error is refused.

This case, therefore, falls squarely within the class of cases referred to by *Robertson and Kirkham. "Jurisdiction of the Supreme Court of the United States", Section* 49, and is not within that class of cases wherein the appellant is entitled to a review upon the merits only

at the *discretion* of the highest court of the State, which line of cases is referred to and cited in *Section* 48 of *Robertson and Kirkham* text. Those authors, in *Section* 49 of their work, make it quite plain that where, as is the case here, an appellant has enjoyed a review *on the merits* by the Supreme Court of Texas *as of right*, the appeal should be prosecuted from the Supreme Court of Texas; not from the intermediate appellate court, as is the case where the review is only discretionary with the highest court of the State.

In the case of *Gammel Statesman Publishing Co. vs. Ben C. Jones & Co.*, 206 S. W. 931, how and where did the Supreme Court of Texas derive its power and authority to enforce, as a judgment of its own, after first refusal of writ of error, the judgment first rendered by the Court of Civil Appeals, if the Supreme Court of Texas was not actually exercising its appellate jurisdiction over the cause and affirming it upon its merits (as it expressly held it had done) by the refusal of the first application for writ of error? Listen again to what the Supreme Court of Texas said in the Gammel decision:

> "The motion in the case before us was filed and acted upon by the Court of Civil Appeals after the Supreme Court had *refused* a writ of error in said cause, *and by such action affirmed the original judgment of the Court of Civil Appeals and that of the trial court.*"

Although Appellant admits at pages 23-25 of its brief, that the *Gammel Statesman* case fully supports our contention herein as to the State law, yet it contends that the force of that decision, as an authority,

is weakened by the fact that it involved *unusual circumstances.*

Elsewhere (pages 5, 14-16) Appellant cites *San Antonio & Aransas Pass Ry. Co. vs. Blair,* 108 Tex. 434, 437-441, and *Gatz vs. City of Kerrville,* 121 Tex. 92, as holding contrary to, and in effect overruling, the Gammel Statesman case; and even contends that such cases hold that the refusal of the writ of error by the Supreme Court of Texas is a refusal to exercise any jurisdiction, and not the exercise of jurisdiction and affirmance upon the merits. Neither of the cases holds any such thing. The *Gatz* case does not purport to overrule the *Gammel Statesman* case. The *San Antonio & Aransas Pass* case was decided approximately eighteen months before the *Gammel Statesman Publishing* case. It involved simply the question of whether the 1917 Statute, authorizing the Supreme Court to designate three justices of the Courts of Civil Appeals to pass upon applications for writs of error pending in the Supreme Court, was unconstitutional. The majority held it constitutional upon the view that it was not expressly forbidden by the State Constitution, and was, therefore, authorized.

Neither the *San Antonio & Aransas Pass* case nor the case of *Gatz vs. City of Kerrville* in any way supports the proposition to which Appellant cites them, at pages 5, 14-16 of its brief, nor in any way militates against the authority of the *Gammel Statesman* case. What the *S. A. & A. P.* and *Gatz* cases hold is, not that the Supreme Court of Texas is not actually exercising its jurisdiction upon the merits in passing upon applications for writs of error, but

that the State Constitution not only does not forbid but expressly authorizes such jurisdiction to be exercised as an aid to that Court by judicial officers or agencies other than the judges of the court proper.

In its footnote 10 at the bottom of pages 24, 25 and 26 of its brief, Appellant cites certain cases which it states support its contention that the Bench and Bar of Texas have for over twenty years regarded the *Gammel Statesman* case as being restricted narrowly to the unusual facts there involved and not as deciding any principle of general application. No case cited supports any such limitation of that case as an authority. *I. & G. N. Co. vs. Anderson County*, 174 S. W. 305, writ refused by the Supreme Court of Texas, affirmed by this Court 246 U. S. 424, and the related case of *City of Houston vs. City of Palestine*, 114 Tex. 306, are not in disagreement with the *Gammel Statesman* case. The Supreme Court of Texas very properly held, 114 Texas 306, that the Court of Civil Appeals had jurisdiction to restrain by an original writ of prohibition the interference by a District Court with the previous judgment of the Court of Civil Appeals, which had been affirmed on its merits by the denial of a writ of error by the Supreme Court of Texas. This was in accordance with the above mentioned general rule in Texas that process for the enforcement of a judgment of the Court of Civil Appeals issues out of that Court even though the judgment has been affirmed by the refusal of a writ of error by the Supreme Court of Texas; and in this particular case such general rule and principle was further reinforced by explicit provisions of both the State Constitution and statutes authoriz-

ing the Court of Civil Appeals to issue the original common law writ of prohibition to prevent interference with its own judgments. The parties against whom the writ of prohibition was issued then attempted to *appeal* from the action of the Court of Civil Appeals in granting the writ of prohibition by filing their application for writ of error from such judgment with the Supreme Court of Texas. The last mentioned Court very properly held that it had no power to exercise *appellate* jurisdiction over the action of the Court of Civil Appeals in granting the writ of prohibition, because the Supreme Court of Texas was by the State Constitution and statutes given *appellate* jurisdiction only in cases where the appeal was from judgments in which the Courts of Civil Appeals themselves exercised *appellate* jurisdiction as distinguished from original jurisdiction. Since the issuance of the writ of prohibition was an *original* proceeding and not an *appellate* proceeding in that Court, then by the express terms of both the State Constitution and statutes the Supreme Court of Texas was deprived of *appellate* jurisdiction over that matter, one statutory provision being explicitly to the effect that the proceeding was final in the Court of Civil Appeals.

The case of *Edgar vs. Stanolind Oil Co., et al,* 90 S. W. (2d) 656, in which Edgar's first application for writ of error was refused by the Supreme Court of Texas, and the second case of the same style, 98 S.W. (2d) 222, in which Edgar's second application No. 22410 for writ of error was also refused by the Supreme Court of Texas, presents but a logical corollary of the ruling in the *City of Palestine vs. City of Houston* litigation, *supra.* In the *Palestine-Houston* case it

was simply held that the Supreme Court of Texas had no *appellate* jurisdiction where the Court of Civil Appeals had *issued* a writ of prohibition; and the *Edgar-Stanolind* case makes a similar holding where the Court of Civil Appeals has *refused to issue* a writ of prohibition.

We respectfully submit, as before, that the motion to dismiss should be sustained.

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EXPLANATION OF TERMS

Ben Avon Borough Case	—Ohio Valley Water Co. vs. B Avon Borough, 253 U.S. 2 64 L. Ed. 908.
City	—Appellees, City of Laredo a its governing body.
Commission	—Appellees, Railroad Commissi of Texas.
Company	—Appellant, United Gas Pub Service Company, and its pre cessors in title, Border C Company, Texas Border C Company, and South Texas C Company.
Court of Civil Appeals	—The Court of Civil Appeals the Third Supreme Judic District of Texas, at Austin.
District Court	—The State trial court—53rd J dicial District Court of Tra County, Texas, sitting at Aust
Dayton Case	—Dayton P. & L. Co. vs. Pu Ut. Com. of Ohio, 292 U. 290, 78 L. Ed. 1267.
Lindheimer Case	—Lindheimer vs. Ill. Bell. T Co., 292 U. S. 151, 78 L. E 1182.
Los Angeles Case	—Los Angeles G. & E. Corp. R. R. Com. of Cal., 289 U 287, 77 L. Ed. 1180.
St. Joseph Case	—St. Joseph Stock Yards Co. United States, 298 U. S. 3 80 L. Ed. 1033.
MCF	—Thousand cubic feet of natu gas.
R.	—Record. — (Note: Rom Numeral following "R."— example, R.I.—indicates R ord, Vol. I. Similarly, R.I, 4 for example, indicates Reco Vol. I, page 40.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1937

NO. 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

Versus

THE STATE OF TEXAS, ET AL,
Appellees

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN

BRIEF AND ARGUMENT FOR APPELLEES

PRELIMINARY STATEMENT.

To our minds the record, as printed, is very awkwardly arranged, and doubtless will cause this Court some inconvenience and confusion, as it has to counsel for the City and Commission. The arrangement of the matter in the printed record is not due to any fault on the part of the Clerk of this Court; or, we believe, to any fault of our own; but is due solely to the procedure adopted by the Company in designating, arranging and printing the record for presentation to this Court. That method we will now attempt briefly to outline, in order that the Court may understand

why the unusual arrangement and duplications in the record necessarily resulted from the Company's procedure.

The record in the Court of Civil Appeals and the Supreme Court of Texas was typewritten, the oral testimony was in question-and-answer form and included all colloquy, objections, arguments, etc., transpiring in the trial before the District Court, and was a great deal more voluminous than the printed record in this Court.

It has been, and is, our understanding that the proper procedure to be followed in designating matters to be included in the transcript sent up to this Court is that the Appellant should first designate the desired portions, and that the Clerk of the Court of Civil Appeals should then await Appellee's counter-designation of additional parts before transcribing any part of the record; and that when both such designations are received, he should then, by parallel references to both such designations, compile all matters called for therein in exactly the same order that the various excerpts appear in the original record. This would insure that the matter in the printed record here would appear in the same sequence, with completeness and with the same context as in the original record.

That course was not pursued in this case, however; on the contrary, the Company, simultaneously with the filing of its designation of parts to be included in the transcript, accompanied such designation with a transcript, made up by its own stenographers, of only the excerpts requested by the Company, without

awaiting Appellees' counter-designation. The Clerk of the Court of Civil Appeals had no adequate clerical or stenographic force for making within the required time a transcript of the large volume of matter included in the praecipes. This became a certainty upon the filing of Appellees' counter-designation of portions to be included in the transcript.

Accordingly, at the Company's request, the parties entered into a stipulation (R.I. 533, et seq) agreeing that in lieu of a transcript the entire original record, together with that portion of the transcript already prepared by the Company of the excerpts requested by it (the latter embracing in addition to numerous short excerpts from the oral testimony and exhibits before the Commission and the District Court, a transcript of the various orders and other proceedings in the Court of Civil Appeals and the Supreme Court of Texas, the originals of which could not go up) might go up as the record in this cause. It will be observed that the portions designated by the Company appear in R.I. 1-536, inclusive, and consist of exhibits and very incomplete excerpts from oral testimony, carefully hand-picked by the Company in such way as to present in the printed record only the matters most favorable to it. These excerpts, being incomplete, severed from their context, and appearing out of their original sequence, are very misleading. It has been the Company's attitude from the beginning that such portions so selected by it, and those alone, should constitute the record on which this Court should dispose of the case.

The Commission and the City have disagreed, and do disagree, with that theory vehemently. It is our

idea that since confiscation is essentially the sole question involved in this appeal, and since practically all of the evidence below bore upon that ultimate question, it was necessary for practically the entire record to be before this Court. Accordingly, in Appellees' counter-designation we have asked for the additional matters which now appear in the record from R.I, 536, to the end of R.II, 1415.

In agreeing that the original record might be accompanied by the partial transcript already prepared by the Company, it was anticipated by us that in making up its printing praecipe the Company would designate the portions desired to be printed, by appropriate volume and page references to the *original* record; and that the partial transcript made up by the Company, and accompanying the record, would be used only for designating for printing the *transcript* of such orders and other proceedings in the Court of Civil Appeals and the Supreme Court of Texas as should be necessary.

Contrary to our expectations, however, the Company in its printing praecipe simply requested the Clerk of this Court to print (R.II, 1407, 1410-1411) "all of the typewritten transcript of record certified by the Clerk of the Court of Civil Appeals pursuant to Appellant's praecipe," etc., and "Appellant designates the remainder of said typewritten transcript, after excluding those parts set out above, for printing." The Company's printing praecipe did not designate by book and page reference from the original record at all, but merely referred to the partial transcript.

It immediately became apparent, therefore, and was pointed out to us by the Clerk of this Court, that such manner of designation for printing by the Company, in the peculiar manner in which this record came up, would make it necessary to segregate, and to print separately in the first portion of the record, only those excerpts called for by the Company, and to print in the subsequent portion of the record those additional parts designated by the City and Commission. It became apparent, also, that this method of printing would seriously distort the record, segregate the Company's requested excerpts from their context, and make the same largely meaningless or misleading; and would also involve numerous duplications, to make the context clear and the sense complete.

After conference with the Clerk of this Court, we conferred at length with counsel for the Company in an attempt to work out a plan whereby these difficulties and distortions could be remedied and the various portions designated for printing by both parties could be arranged without duplication and in the same order and context, as presented in the original record. Counsel for the Company, however, were obdurate and insisted upon having the record printed in the manner in which it now appears. An examination of the record will disclose that to have submitted the case only upon those portions requested by the Company (R.I, 1-536) would not have been a fair presentation of the case to this Court; and in order to obviate this injustice and risk it was necessary for the City and Commission to duplicate in their requested portions some parts requested by the Company, in order to make the context conveniently clear and the sequence orderly.

We call the Court's further attention to the fact that, in our counter-designation of parts to be included in the transcript (R.I,520) we requested the Clerk to omit all unnecessary matter, including all objections to testimony, all comments and arguments on such objections, all rulings thereon, and all the exceptions taken to such rulings, all repetitions of questions and answers, and all other obviously unnecessary matters. Indeed, it was our understanding that this Court's Rule 13, sub-section 9, reading, "He shall, however, omit all duplication or repetition of titles and all other obviously unimportant matter", required the elimination of such matters in printing, without such a specific request from the parties. Since the Court's above-quoted rule has not worked out that way, however, there is some unanticipated matter included in the portions requested by us to be printed.

STATEMENT OF THE NATURE AND RESULT OF THE SUIT

In the month of February, 1909, the City of Laredo granted a 25-year franchise to a group of individuals for the construction and operation of a natural gas distribution system in the said City; this franchise and all rights thereunder were acquired in the year 1910 by a corporation organized at that time and known as the Border Gas Company, which company constructed the necessary transmission and distribution properties and began rendering service to consumers in the City shortly before the end of 1910 (R.I,210, 621-622).

From 1910 to April 10, 1928, Border Gas Company owned and operated the producing gas wells, the transmission lines, and the distribution system supplying natural gas to consumers in Laredo (R.I, 225-227; R.II, 751, 784); on April 10, 1928, that portion of the Company's properties comprising the distribution system, serving Laredo and other communities,[1] was acquired by a newly organized corporation, styled Texas Border Gas Company; and at the same time all gathering lines and equipment and transmission lines were acquired by a newly organized corporation, styled South Texas Gas Company, and the producing gas wells and other production properties were acquired by a newly organized corporation, styled South Texas Production Company (R.I,544-545; R.II, 748, 751, 784). Control, through stock ownership, of the said three corporations was in Appellant here, United Gas Public Service Company, which Company is a unit of United Gas Corporation, which latter corporation is, in turn, an affiliate and under the management of Electric Bond & Share Company of New York (R.I, 11-12, 645-646, 691-695; R.II, 784, 885, 1315, 1334-1335): From the date of the aforesaid dissolution of the original Border Gas Company, April 10, 1928, and the division of its activities into several affiliates, all natural gas distributed in Laredo was purchased by the distributing company, Texas Border Gas Company, from an af-

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[1] The communities, in addition to Laredo, in which the Company owned and operated distribution systems in the Laredo area, are as follows (R.II,766): Hebbronville, Mirando City, Bruni, Aguilares, Roma, Oilton.

filiated transmission company, South Texas Gas Company,[2] which latter company in turn purchased its requirements of natural gas from another affiliate, South Texas Production Company (R.II, 1130-1134). This arrangement continued until October 21, 1932[3], at which time Texas Border Gas Company and South Texas Gas Company were dissolved and their properties transferred to United Gas Public Service Company, (R. I, 588, 731-732), which latter Company thereafter purchased or produced, transported and distributed natural gas to consumers in the City

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[2]The gate rate contract under which South Texas Gas Company sold to its affiliate, Texas Border Gas Company, all gas distributed in Laredo and the surrounding territory was entered into April 10, 1928, and provided for the following scale of rates:

30c per MCF for all gas sold to domestic consumers;
14c per MCF for all gas sold to industrial consumers.

The aforesaid gate rate prices are not directly involved in this proceeding, as the properties of the Company used, useful, and necessary in serving Laredo were valued as a complete operating unit. (R. I, 12).

[3]On February 28, 1931, at the inception of this rate controversy, the Company, in response to the City's request, supplied a map purporting to show the transmission property claimed to be used and useful in the service of Laredo as of that time. (R.I,216-A, map; R.II, 1280-1282). Compare this map with the map of the properties claimed to be used, useful and necessary in the Laredo service, made up by the Company in December, 1931, (R.II, 1405). For the Court's convenience we have appended, as the last page of this brief, a replica of this last mentioned map.

and the surrounding area (R. I, 103-104, 588). No competing gas system has ever operated or supplied gas to consumers in Laredo, (R. I, 702-703).

Up to 1921, the Company served domestic gas to consumers in Laredo at 50 cents per MCF, (R. I, 628). In that year, on the Company's representations that the gas supply was being "rapidly exhausted", it procured the City's acquiescence, without ordinance but by sufferance, to raise the rate to 75 cents gross (67½c net), with $1.00 per month minimum bill, upon its promise that "if the gas supply should increase, that the rate would be again reduced to a reasonable amount." (R. I, 7-8). Although by December 15, 1931, as recited in the preamble to the City's rate reduction ordinance of that date, the gas supply had "sufficiently increased and is now such as to demand that such agreement be complied with", (R. I, 7-8), the Company refused to reduce the increased rate, and continued to charge same until the present time. (R. I, 32, 64, 539, 583). This has been the Company's attitude, despite the fact that as early as 1922 the Carolina-Texas field, approximately 13 miles northeast of the original Reiser field, and only 37 pipe line miles from Laredo, (See map R. II, 1405, or Appendix to this brief), was discovered with a supply which, even as of the time of the trial in 1934, after nearly ten years of withdrawals, was still sufficient to supply the entire needs of the City and other surrounding communities; and despite also the later discovery of other numerous and almost inexhaustible sources of supply, such as the Cole-Bruni fields only a few miles east of Carolina-Texas. In fact, the record shows

without doubt that the nearby available reserves are and have been almost unbelievably large. See the Company's own statement as to its reserves in the immediate area, as of March 6, 1928, in a circular then distributed by it, and upon the strength of which it sold bonds and securities. (R. I, 696, 715-717). See also R. I, 654, showing the open flow capacity of the wells in some of these fields.

This cause had its inception in the passage of an ordinance by the City on December 15, 1931, reducing the then prevailing domestic rate of 75 cents (net 67½c) per MCF for natural gas to 40c per MCF; the ordinance, by its terms, was to become effective January 1, 1932, (R. I, 9). On December 23, 1931, the Company filed its appeal with the Commission and posted its bond in accordance with the provisions of Article 6058, R.C.S. Texas (1925), which said appeal is No. 49 on Gas Utilities Docket of the Commission, (R. I, 59).

Subsequently, on June 29, 1932, the Company filed with the City an application for an increase in rate to $1.50 per MCF to domestic consumers.[4] Upon receipt of said application the City requested the Company to submit facts and figures setting forth its requirements necessitating such increase. Failing to receive such information, the City took no action on the application (R. II, 1353-1355).

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[4]The Company's proposed rate schedule appears in R. II, 1352-A.

Pursuant to the provisions of said Article 6058, R.C.S. Texas (1925)[5], the Company perfected its appeal, which appeal is No. 63 on the Gas Utilities Docket of the Commission.

The two appeals were consolidated and hearings were held thereon before the Commission in October and November, 1932 (R. I, 9, 11).

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[5]"Art. 6058. Appeal from city control. When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission."

On June 13, 1933, the Commission entered its order (R. I, 25-26) fixing the rate for natural gas to domestic consumers in the City at 55c per MCF, effective as of January 1, 1932 (the effective date of the ordinance and eight days after the Commission acquired jurisdiction of the parties and of the subject-matter herein), and ordering refunds of the difference between the prescribed rate and the amounts collected by the Company from January 1, 1932. The Commission's opinion and findings appear in R. I, 9-25.

On June 29, 1933, the Company filed its petition in the United States District Court for the Southern District of Texas to enjoin the enforcement of the order. A temporary restraining order was issued by the District Judge, and a three-judge court was assembled to hear the application for an interlocutory injunction (R. I, 33).

On July 26, 1933, this cause was instituted by the Commission and City in the State District Court at Austin (R. I, 1), and an application filed with the three-judge court under Section 380, Title 28, U.S.C.A., (Sec. 266, Judicial Code, as amended) for a stay of proceedings in the Federal Court, pending the trial and disposition of the case in the State Courts. On August 1, 1933, the three-judge court entered its order staying all proceedings in the Federal Court, pending the disposition of the case in the State Courts, but retaining jurisdiction of the subject-matter pending the final determination of the cause (R. I, 28-30). Immediately, upon entry of said order by the three-judge court, the Company filed its petition in the United States District Court for the Western District

of Texas seeking a removal of the cause from the State to the Federal Courts for trial; and upon hearing had on the said petition, the District Judge entered his order remanding the case to the State District Court at Austin for trial and future proceedings therein (R. II, 1109).

A trial was had in the State District Court, under the provisions of Article 6059, R.C.S. Texas (1925)[6], resulting in a judgment sustaining the 55c

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[6]Art. 6059, R.C.S. Texas (1925): "Appeal from orders. If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them."

See R. I, 413, for the Court of Civil Appeals' construction of Art. 6059 as permitting the Commission to institute the suit in the nature of an appeal in these circumstances, so as to transfer the litigation to the State District Court pursuant to Title 28, Sec. 380, U.S.C.A. (Sec 266, Judicial Code, as amended).

rate in all respects, excepting the provision as to refunds accruing to rate-payers from January 1, 1932, the effective date of the order (R. I, 389).

On appeal by the Company to the Court of Civil Appeals, a decision was rendered by that Court on October 30, 1935, upholding the order of the Commission *in toto*, including the refund provision which the District Court had stricken down (R. I, 410-429).[7]

The Company thereupon filed with the Supreme Court of Texas its application for writ of error, which application, after having been before the said Court for its consideration for nine months (R. I, 458) was by it in all things refused on October 7, 1936, (R. I, 474), and the Company's motion for rehearing thereof was overruled on December 30, 1936 (R. I, 479).

The Company contends that its efforts to obtain appellate judicial review of the case in both the Court of Civil Appeals and the Supreme Court of Texas have been fruitless. As will appear more fully below, the Company has obtained thorough-going appellate judicial review of its case both in the Court of Civil Appeals and in the Supreme Court of Texas. Under the established statutory practice in Texas, the refusal of the application for writ of error by the Supreme Court of Texas (as distinguished from a *"dismissal for want of jurisdiction"*) constitutes and necessarily involves a thorough consideration of the entire case

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[7]United Gas Public Service Co. vs. State of Texas et al, 89 S. W. (2d) 1094, writ refused.

on its merits, and is an affirmance of the judgment of the Court of Civil Appeals, without opinion. *Gammel Statesman Pub. Co. vs. Ben C. Jones & Co.*, 206 S. W. 931; (not officially reported, Supreme Court of Texas). Art. 1728, R.C.S. Texas (1925), as amended (Acts 1927, 40th Leg., p. 214, ch. 144, Sec. 1); fixing jurisdiction of, and prescribing procedure to be followed by, the Supreme Court of Texas in acting upon applications for writs of error.[8]

The Company's Petition for Appeal to this Honorable Court was thereupon presented to and allowed by Mr. Justice Benjamin N. Cardozo, January 20, 1937 (R. I, 513-514).

SUMMARY OF ARGUMENT

GENERAL THESIS: THE COMPANY'S EVIDENCE WAS INSUFFICIENT, BOTH AS A MATTER OF LAW AND A MATTER OF FACT, TO DEMONSTRATE CONFISCATION AND TO OVERTURN THE PRESUMED VALIDITY OF THE ORDER. THE COURT OF CIVIL APPEALS, THEREFORE, MADE A CORRECT DISPOSITION OF THE CASE IN ANY EVENT.

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[8] "Art. 1728 * * * In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; in all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it shall dismiss the case for want of jurisdiction."

THIS BECOMES MORE CLEARLY APPARENT WHEN THE COMPANY'S EVIDENCE IS CONSIDERED IN CONNECTION WITH, AND CHECKED BY, THE COMMISSION'S EVIDENCE SHOWING THAT THE 55c RATE IS COMPENSATORY.

I. There is, and can be, no claim of denial of due process through lack of due notice, hearing, or opportunity to be heard, the Company having plead (R. I, 33) that the order was entered after "a hearing was held with respect thereto in October and November, 1932, and full testimony was given with respect to" the entire matter.

II. The order is presumed *prima facie* to be non-confiscatory:

St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 52, 53, 54, 60, 64, 67; 80 L. Ed. 1033;
Lindheimer vs. Ill. Bell Tel. Co., 292 U. S. 151, 164, 169, 175; 78 L. Ed. 1182;
Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 304, 305, 307; 77 L. Ed. 1180;
Dayton P. & L. Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 290, 298; 78 L. Ed. 1267;
Darnell vs. Edwards, 244 U. S. 564, 569; 61 L. Ed. 1317;
Willcox vs. Consolidated Gas Co., 212 U. S. 19, 41; 53 L. Ed. 382;
United Fuel Gas Co. vs. R. R. Com. of Kentucky, 278 U. S. 300, 313; 73 L. Ed. 390.

III. Orders of the Commission have the same force and effect as ordinary statutes of the State; and are,

therefore, entitled to the exceedingly strong presumption of validity that is accorded to statutes in determining the constitutionality thereof:

Pacific States Box & Basket Co. vs. White, 296 U. S. 176, 185-186; 80 L. Ed. 138;
West Texas Compress Co. vs. P. & S. F. Ry. Co., 15 S.W. (2) 558, 560;
R. R. Com. of Texas vs. Uvalde Construction Co., 49 S.W. (2) 1113, 1114.

IV. The burden is upon the complaining party to prove confiscation or deprivation of other constitutional rights by evidence so clear and satisfactory as to leave no reasonable doubt in the judicial minds of the reviewing courts:

Cases cited under Point II above; and
Art. 6059 R. C. S. Tex. (1925).[9]
San Diego Land & Town Co. vs. National City, 174 U. S. 739, 754; 43 L. Ed. 1154;
Knoxville vs. Knoxville Water Co., 212 U. S. 1, 16; 53 L. Ed. 371;
C. M. & S. P. R. Co. vs. Thompkins, 176 U. S. 167, 173; 44 L. Ed. 417;
G. C. & S. F. Ry. Co. vs. R. R. Com. of Texas, 102 Tex. 338, 352; 113 S.W. 741, 747;
R. R. Com. of Tex. vs. Weld & Neville, 96 Tex. 394, 409; 73 S.W. 529;
R. R. Com. of Tex. vs. Galveston Chamber of Commerce, 105 Tex. 101, 115; 145 S.W. 573;

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[9]"In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by CLEAR AND SATISFACTORY evidence that the rates . . . complained of are unreasonable and unjust to it or them."

R. R. Com. of Tex. vs. Shupee, 57 S.W. (2) 295, 301, affirmed 123 Tex. 521, 528, 73 S. W. (2) 505, 508;
Brown vs. Humble Oil & Ref. Co., 126 Tex. 296, 87 S. W. (2) 1069, 1070.

V. The foregoing rule (Point IV, above) does not place upon the Company, as it will contend, an impossible burden in the sense that the order will be upheld if there is any evidence countervailing against the Company's. It does mean that the Court of Civil Appeals, and the Supreme Court of Texas, properly did what this Court has many times done; (See cases cited under Points II, IV and XXII), namely, analyzed all of the Company's evidence and determined as a preliminary question of law that the same lacks the quality of being sufficiently clear and satisfactory to outweigh the presumed validity of the order. The law itself, which places upon one complaining of the Commission's order the extraordinarily heavy burden of proving it confiscatory by clear and satisfactory evidence, stands always at the threshhold of a rate case as a continuing challenge of the legal sufficiency of the complaining party's evidence. If the evidence does not measure up to the required standard of clarity and satisfactoriness, in the opinion of the reviewing court sitting in chancery (this being an equity case), then the complaining party has, as a matter of law, failed to discharge the burden of overturning the presumed validity of the order. The complaining party proceeds at his own peril as to meeting this burden. Any other rule would make the courts, and not the Commission, the ultimate legislative rate-makers.

VI. In this view, the District Court, the Court of Civil Appeals and the Supreme Court of Texas, have retained and exercised their right of independent judgment as to the facts, as well as the law of the case, prescribed as constitutionally requisite by the decisions of this Court in the *Ben Avon Borough and St. Joseph cases;* and had it been determined, as a matter of law, that the Company's evidence was sufficiently clear and satisfactory to present fact issues and to overturn the presumed validity of the order, then the Court of Civil Appeals or the Supreme Court of Texas would have remanded the cause to the District Court for fact findings:

> Railroad Com. of Texas vs. Shupee, 57 S.W. (2d) 295, 301[10], affirmed 123 Tex. 521, 528, 73 S.W. (2d) 505, 508.

VII. If it is not a denial of due process under the Fifth Amendment to the Federal Constitution for this

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[10]The Court said, at page 301: "The manifest difference in these statutes is only as to the quantum of proof necessary on the respective appeals, and does not affect the principle on which the Court acts in determining whether the order is unreasonable and unjust as to complainant, which rule is the same in each appeal. That is, each of these appeal statutes is construed with reference to the particular statutes to which each relates, and merely requires that the court must first judicially determine whether the complainant has introduced evidence of such probative force or value, or such character or quantum, as will satisfy the statutory burden placed by each statute upon the complainant; and when the Court has judicially determined such matter favorably to complainant, then to proceed with the trial of any fact issue as in ordinary trials on a preponderance of the evidence."

Court to dispose of cases of alleged confiscation by the method, outlined in Point V above, of weighing and passing upon the legal sufficiency of the evidence to overturn the presumed validity of the order (See cases cited under Points II, IV, and XXII), then it cannot be a denial of due process under the Fourteenth Amendment for the state courts to pursue the same method, as the Court of Civil Appeals and the Supreme Court of Texas have done in this case.

VIII. In the absence of some constitutional, statutory, or court rule provision requiring findings of fact by the regulatory commission, or by the reviewing courts (there being no such provision applicable here), such findings are not essential to the validity of the Commission's order or to the regularity of a judicial review thereof; and they are not in any event essential to due process under the Fifth and Fourteenth Amendments to the Federal Constitution. This Court's Equity Rule No. 70½ requires such findings to be made by inferior federal courts, but not by state courts:

Pacific States Box & Basket Co. vs. White, 296 U. S. 176, 186; 80 L. Ed. 138;
United Fuel Gas Co. vs. R. R. Comm. of Ky., 278 U. S. 300, 309-310; 73 L. Ed. 390;
Tex. Motor Coaches vs. R. R. Comm. of Tex., 59 S.W. (2) 923, 926, affirmed 123 Tex. 517, 73 S. W. (2) 511.

IX. Even if it should be determined (as we think it should not) that there is a denial of due process to the Company under the Fourteenth Amendment, abstractly, in any failure of the Commission to make

findings upon ultimate or subsidiary facts; or in the failure, if there was a failure, of the state courts to make complete findings of fact; yet this assumed abstract unconstitutionality would not of itself be sufficient to entitle the Company to an injunction against enforcement of the order. It would be necessary for the Company to go farther and prove actual and substantive injury through confiscation by the rate actually fixed by the Commission, which has not been done:

United Fuel Gas Co. vs. R. R. Com. of Ky., 278 U. S. 300, 309-310; 73 L. Ed. 390;
Premier-Pabst Sales Co. vs. Grosscup, 298 U. S. 226, 227; 80 L. Ed. 1155;
State Corp. Com. vs. Wichita Gas Co., 290 U. S. 561, 568-569; 78 L. Ed. 500, 504;
Terrace vs. Thompson, 263 U. S. 197, 214; 68 L. Ed. 255, 274;
Great Northern Ry. Co. vs. Washington, ... U. S. .....; 81 L. Ed. ..... (dissenting opinion) (Adv. Op. No. 7, p. 359); (No. 20, October Term, 1936);
West vs. Chesapeake & Potomac Tel. Co., 295 U. S. 662, 681; 79 L. Ed. 1640, 1652 (dissenting opinion).

X. To uphold the order, it was not (as the Company will contend) necessary to, and the Court of Civil Appeals and the Supreme Court of Texas did not, close their eyes and minds to the evidence submitted by the Company, or fail or refuse to consider and analyze same thoroughly and accord to it all of the weight to which it was entitled; nor did they base their holdings, as the Company contends, upon an arbitrary acceptance of the Commission's evidence and a rejection of the Company's. Nor did the Courts, as

the Company contends, fail to consider Appellant's evidence merely because they did not, in opinion, discuss in detail each point raised by the Company. The Company fails to distinguish, on the one hand, between the Court's consideration and analysis of its evidence, and a determination based thereupon (which may be done *aliunde* the opinion), and, on the other hand, a mere failure to disclose in the face of the written opinion all of its reasoning and mental processes, which disclosure is not requisite. It was competent for the State courts to, and they did, not only analyze the Company's evidence thoroughly, but, based upon such analysis, concluded that it failed to measure up to the law's required standard of clarity and satisfactoriness to overturn the *prima facie* validity of the order; and it was also competent for the Courts to give full effect to such parts of the Commission's evidence as were uncontroverted; and to consider the remainder of the Commission's evidence, even though controverted, for use as a check against the acceptability of the Company's evidence:

Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 294; 295, 296, 297, 301-302, 309-310, 311, 312; 77 L. Ed. 1180;

St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 57-58, 61; 80 L. Ed. 1033.

XI. The complaining party does not meet the burden of proving the invalidity of the order by attacking the evidence adduced by the opposing party, but must himself submit evidence sufficiently clear and satisfactory to overturn the order:

Allen vs. S. L. I. M. & S. Ry. Co., 230 U. S. 553, 560; 57 L. Ed. 1625;

Atlantic Coast Line R. Co. vs. Florida, 295 U. S. 301, 317-318; 79 L. Ed. 1451;
Norfolk & W. Ry. Co. vs. North Carolina, 297 U. S. 682, 689-690; 80 L. Ed. 977.

XII. This Court has been especially reluctant to find rates confiscatory where, as here, they have not been put into effect and given a reasonable trial in actual operation, to eliminate speculation and to determine definitely the volume of business and net revenue that would be produced under the reduced rate:

Knoxville vs. Knoxville Water Co., 212 U. S. 1, 16-17; 53 L. Ed. 371;
Darnell vs. Edwards, 244 U. S. 564, 569; 61 L. Ed. 1317;
Willcox vs. Consolidated Gas Co., 212 U. S. 19, 41; 53 L. Ed. 382;
Georgia Power Co. vs. R. R. Comm. of Georgia, 262 U. S. 625, 633; 67 L. Ed. 1144;
St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 49, 72; 80 L. Ed. 1033;
Louisville vs. Cumberland Tel. & Tel. Co., 225 U. S. 430, 433, 436; 56 L. Ed. 1151;
Brush Electric Co. vs. City of Galveston, 262 U. S. 443, 444-446; 67 L. Ed. 1076;
Lincoln G. & E. Co. vs. Lincoln, 250 U. S. 256, 262; 63 L. Ed. 968;
Cedar Rapids Gas Co. vs. Cedar Rapids, 223 U.S. 655, 667-670; 56 L. Ed. 594;
S. & N. Ala. Ry. Co. vs. R. R. Comm. of Ala., 210 Fed. 465; 480.

XIII. Under an actual test of the 55c rate for a reasonable trial period, it is probable, if not certain, under the record here, that an increased attachment of new customers and an increased consumption per cus-

tomer would result, which would more than offset in increased net revenue the amount of the reduction. This probable increase has been measured in volume with reasonable certainty in the record:

Louisiana R. Com. vs. Cumberland Tel. & Tel. Co., 212 U. S. 414, 426; 53 L. Ed. 577;
Willcox vs. Consolidated Gas Co., 212 U. S. 19, 49-50; 53 L. Ed. 382;
Knoxville vs. Knoxville Water Co., 212 U. S. 1, 16; 53 L. Ed. 371;
Brush Electric Co. vs. City of Galveston, 262 U. S. 443, 446; 67 L. Ed. 1076.

XIV. This Court is not concerned with mere irregularities or erroneous methods or reasoning pursued by the Commission, or by the State Courts, but is interested only in determining whether the prescribed rate in its over-all result ("totality of its consequences") falls below the line of confiscation:

Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 304-305, 314, 315-316, 317; 77 L. Ed. 1180;
Lincoln G. & E. Co. vs. Lincoln, 250 U. S. 256, 267-268; 63 L. Ed. 968;
Dayton P. & L. Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 290, 297-298, 309; 78 L. Ed. 1267;
Lindheimer vs. Ill. Bell. Tel. Co., 292 U. S. 151, 175; 78 L. Ed. 1182;
St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 49, 69; 80 L. Ed. 1033;
W. Ohio Gas Co. vs. Pub. Ut. Com. of Ohio (Lima Case), 294 U. S. 63, 70; 79 L. Ed. 761;
R. R. Com. of Texas vs. Galveston Chamber of Commerce, 105 Tex. 101. 115-116, 145 S.W. 573, 580.

XV. A corollary is, that even should it be proved that the Commission has made a finding erroneously prejudicial to the complaining party as to some particular element or elements of the rate structure (which was not done here), the complaining party must go farther and prove that other compensating liberalities have not been indulged in its favor by the Commission in the findings and allowances as to other elements of the rate structure:

Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 316-317; 77 L. Ed. 1180;
Lindheimer vs. Ill. Bell Tel. Co., 292 U. S. 151, 175; 78 L. Ed. 1182;
Dayton P. & L. Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 290, 305, 306, 309-310; 78 L. Ed. 1267;
Lincoln G. & E. Co. vs. Lincoln, 250 U. S. 256, 267-268; 63 L. Ed. 968.

XVI. All of the Company's claims of confiscation are bottomed upon the fallacious assumption that the 7% net annual return found reasonable by the Commission, and all of its other findings as to rate base and other elements and subsidiary facts relating to the rate structure, insofar as such findings are favorable to the Company, are sacred and inviolable minima below which the Commission and the reviewing courts are estopped and precluded from going in determining the issue of confiscation; and that, insofar as such findings are unfavorable to the Company, they are subject to its attack. No estoppel or *res judicata* is involved in connection with the findings, either of the Commission or of the inferior reviewing courts. If the Company is free to attack the findings, as being too low, then the

Commission must be equally free to show that they are too liberal:

St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 46-47, 56, 63-64, 72; 80 L. Ed. 1033;
Lindheimer vs. Ill. Bell Tel. Co., 292 U. S. 151; 78 L. Ed. 1182;
Columbus Gas & Fuel Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 398, 414; 78 L. Ed. 1327;
Prentis vs. Atlantic Coast Line R. Co., 211 U. S. 210, 227; 53 L. Ed. 150;
Indianapolis Water Co. vs. McCart, 13 Fed. Suppl. 110, 113.

XVII. The Company's claims of confiscation are likewise founded upon the erroneous assumption that unreasonableness (which is here a question of State law) is the same thing as confiscation, which is a Federal question. The issue before this Court is not whether the 55c rate will yield 7%, or any other reasonable rate of return, but whether it is confiscatory. This distinction should be borne in mind in reading the precedents. Some cases previously before this Court, coming up from inferior Federal Courts, have involved both confiscation and unreasonableness.

XVIII. All of the Company's claims of confiscation are built also upon the untenable assumption that if it be shown that the net revenues under the reduced rate for any particular twelve-months' operating period would apparently have fallen below the 7% level found reasonable by the Commission, that this, *ipso facto*, shows confiscation. In attempting to make such a showing, the Company insisted before the Com-

mission that the latter, in fixing the rate, should only use the operating results for the twelve-months' period ending July 31, 1932, which indisputably was a period deeply affected by the economic depression; and, before the Courts, the Company insisted that the validity of the rate should be tested only by the operating results of the calendar years 1932 and 1933—both of such years being likewise depression years, and 1933 being admittedly (R. I, 86) doubly abnormal because of the unusually high temperatures prevailing during that year. This method was erroneous, first for confining the investigation before the Commission to a single twelve-months' period, which is condemned by the authorities, regardless of abnormalities; and, second, for attempting to have the rate fixed and tested by the results of single twelve-months' periods which were abnormal for two different reasons. The authorities amply establish that the Commission, in fixing the rate, and the courts, in testing it, both for unreasonableness and confiscation, should consider the average results of a reasonable spread of fat and lean years in order to equalize the fluctuations inevitably brought about by abnormalities of all kinds:

Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 298-299, 303-304, 311-312, 319-320; 77 L. Ed. 1180;

St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 46-47, 55, 71, 72; 80 L. Ed. 1033;

Lindheimer vs. Ill. Bell Tel. Co., 292 U. S. 151, 78 L. Ed. 1182;

Galveston Elec. Co. v. Galveston, 258 U. S. 388, 400, 401, 403; 66 L. Ed. 678, 685, 686;

Lincoln G. & E. Co. vs. Lincoln, 250 U. S. 256, 268; 63 L. Ed. 968;

Darnell vs. Edwards, 244 U. S. 564, 569; 61 L. Ed. 1317;
Brush Electric Co. vs. City of Galveston, 262 U. S. 443, 446; 67 L. Ed. 1076;
Knoxville vs. Knoxville Water Co., 212 U. S. 1, 14-15, 17-18; 53 L. Ed. 371;
Acker vs. United States, 298 U. S. 426, 431; 80 L. Ed. 1257;
West Ohio Gas Co. vs. Pub. Ut. Com. of Ohio, (Kenton Case) 294 U. S. 79, 81; 79 L. Ed. 773, 776;
Municipal Gas Co. vs. Com., 225 N. Y. 89, 98; 121 N. E. 772, 774;
Denver Union Stock Yards Co. vs. United States, 57 Fed. (2) 735, 752-753;
Kings County Lighting Co. vs. Lewis, 110 Miscl. Rep. 204; 180 N. Y. Suppl. 570, 593;
S. & N. Ala. Ry. Co. vs. R. R. Com. of Ala., 210 Fed. 465, 480;
Reno P. L. & W. Co. vs. Com., 298 Fed. 790, 801.

XIX. If it be accepted that the issue of confiscation is to be decided upon the basis of a reasonable spread of lean and fat years, as outlined in Point XVIII above, then it is immaterial as of what date during the spread the refund provision attaches. The process is automatically a self-levelling one. See cases cited under Point XVIII above.

XX. In arriving at its purported percentages of net return in its computations the Company has consistently used one or more or all of the following erroneous bases of calculation:

1. Treating the findings of the Commission as minima, and its 7% as coinciding with the line of confiscation.

2. Disregarding the abnormally high temperatures admittedly prevailing in 1933. See *Los Angeles* case, 289 U. S. 298-299, 303-304, 320.

3. Assuming that there would be no increased consumption under the reduced rate.

4. Assuming that there would be no increased consumption with the return of purchasing power of consumers in recovery from the economic depression.

5. Deducting from available revenue improper charges to operating expenses, both of items found improper and disallowed by the Commission, and of the kinds which, although allowed by the Commission, we contend are improper as charges against public service operations.

6. Deducting from prospective revenues the so-called "non-recurring" industrial revenues previously derived from Central Power and Light Company, and Motor Fuel Products Company, and assuming that there would be no other industrial consumption to take the place of these sales.

7. Failing to take into account the average results of a reasonable spread of years, and insisting upon confining the investigation to a single abnormal twelve-months' operating period before the Commission, and to two doubly abnormal operating periods before the courts.

8. In various computations it combines the findings of the Commission, in so far as found favorable to its uses, with other bases which are departures from the findings of the Commission, in so far as found unfavorable to it.

The composite effect of all these errors removes the claimed results so far from realities as to be useless as a basis for testing the validity of the rate.[11]

XXI. Not only did the Company erroneously insist that no operating results were admissible for any period prior to the twelve-months' period ending July 31, 1932, before the Commission, and the calendar years 1932 and 1933 before the courts, but it even insisted that no evidence of any character whatsoever was admissible for any purpose pertaining to any prior periods of the Company's history. It is our position that evidence as to such prior periods pertaining to the Company's whole history, finances, property and operations was not only admissible but necessary, as bearing upon (a) historical cost, (b) history of the Company, (c) book value of fixed capital, (d) the five structural overhead expenses, (e) reproduction cost new, (f) accrued depreciation (per cent condition), (g) going concern value, (h) cash working capital, (i) fair value, (j) future operating expenses, (k) future revenues, (l) future annual accruals to depreciation reserve, and (m) rate of return for the future.

XXII. The weight to be accorded the testimony of the Company's expert witnesses can not be determined without understanding their approach to the questions and the criteria which governed their estimates. The testimony of such experts shows quite clearly that in

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[11]This is clearly apparent in the computation appearing at pages 14, 34, 36 and 37 of the Company's brief, and the first computation at R. I, 40.

every essential element of the rate structure, and in many details (particularly in computations purporting to apply the 55c rate to the experience of 1932 and 1933 and to project it into the future), they proceeded, in part at least, upon erroneous, conjectural, speculative, unfair, excessive and untenable bases. Their testimony, estimates, and computations are, therefore, in many instances to be rejected as having no probative force in law, and as being "in no real sense evidence.":

St. Joseph Stock Yards Co. vs. United States, 298 U. S. 38, 59-60, 62, 63; 80 L. Ed. 1033;
Los Angeles G. & E. Corp. vs. R. R. Com. of Cal., 289 U. S. 287, 317-319; 77 L. Ed. 1180;
Dayton P. & L. Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 290, 298-301, 302, 305, 311-312; 78 L. Ed. 1267;
Columbus Gas & Fuel Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 398, 412-413; 78 L. Ed. 1327;
Lindheimer vs. Ill Bell Tel. Co., 292 U. S. 151, 162-164, 170-175; 78 L. Ed. 1182;
Knoxville vs. Knoxville Water Co., 212 U. S. 1, 18; 53 L. Ed. 371;
United Fuel Gas Co. vs. R. R. Com. of Ky., 278 U. S. 300, 316; 73 L. Ed. 390.

XXIII. In determining the level of net return at which the line of confiscation is reached, this Honorable Court will take into consideration the depressed economic conditions prevailing at the time of the order:

Dayton P. & L. Co. vs. Pub. Ut. Comm. of Ohio, 292 U. S. 290, 311; 78 L. Ed. 1267.

XXIV. The Company's attitude from the inception to this proceeding before the City Council has been

one of studied concealment and non-cooperation rather than of candid revelation. An examination of the record will clearly show this to be true:

Knoxville vs. Knoxville Water Co., 212 U. S. 1, 18; 53 L. Ed. 371, 382.

XXV. The Company, in its evidence and computations presented before both the Commission and reviewing courts, has relied upon "elaborate tabulations of estimates", "at war with realities", which have "proved too much" and "overshot the mark." Although the Company alleged (R. I, 40) that the existing 75c rate as of the date of trial (March and April 1934) had been confiscatory "since February 1931", (shortly after the rate controversy with the City arose, R. I, 216-A, R. II, 737, 1280-1283), and submitted an exhibit purporting to demonstrate that claim by showing net earnings of only 0.92% on its claimed rate base for the twelve months' period ending July 31, 1932 (R. I, 201), it did not, until June 29, 1932, (R. II, 1353-1355) apply to the City for an increase of its domestic rate to $1.50 per MCF—about seven months after the enactment of the City Ordinance of December 15, 1931, (R. I, 9) reducing the rate, and more than seventeen months after it claimed the 75c rate had become confiscatory in February, 1931. Even under this proposed $1.50 schedule according to the Company's exhibit before the Commission (R. II, 1352)[12] it would not, for the

[12]If the $1.50 rate would have earned 4.57% as claimed, the 75c rate on the same rate base, with the same operating expenses, and for the same period ought to have earned more than 0.92% as claimed. One or the other calculation is clearly wrong. See also footnote 14, infra, p. 37.

twelve months ending July 31, 1932, have earned more than 4.57% net upon its claimed rate base. If this were true, it is obvious that the 75c rate had been confiscatory even much earlier than February, 1931. Although the Company's Vice President, Strange, testified that the Company had asked for the increase to $1.50 per MCF in June, 1932, because its investigations indicated it was entitled to the raise (R. II, 1232), yet its Chief Accountant, Womack, in charge of rate cases (R. I, 574), three times stated deliberately that all the Company wished to accomplish was to *maintain* its existing 75c rate (R. II, 1082-1083). Such evidence, therefore, is "of no avail", "fails of the intended effect", and this Court should prefer, and be governed by, "the test of conduct", and refuse to accept such evidence as a basis for finding confiscation. These circumstances, and the Company's own two earlier computations (0.92% and 4.57% referred to above), cast devastating doubts upon all their claims of confiscation herein, and particularly upon their purported application (R. I, 93) of the 55c rate to the experience of 1932 and 1933.[13] See also Point XXVI, E, 1, infra pp. 41-43. "Men do not transact business without protest at confiscatory rates, at all events in the absence of extraordinary circumstances making submission to the loss expedient. If such circumstances exist, the Appellant has not proved them . . . That being so, what the public utility has done belies what it has said":

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[13]See also the computations appearing at pp. 14, 34, 36 and 37 of the Company's brief.

Dayton P. & L. Co. vs. Pub. Ut. Comm. of Ohio, 292 U. S. 290, 311-312; 78 L. Ed. 1267;
Lindheimer vs. Ill. Bell Tel. Co., 292 U. S. 151, 161, 162, 163, 164, 175, 176; 78 L. Ed. 1182.

XXVI. The following is a list of the principal, but not of all, points of controversy between the parties:

A. RATE BASE:

1. As to whether the 26-mile Pescadito-Jennings transmission line was shown to be necessarily used and useful in serving Laredo.

2. As to whether the East Jennings Field gathering system was shown to be necessarily used and useful in serving Laredo.

3. As to whether the West Jennings gathering system was shown to be necessarily used and useful in serving Laredo.

4. As to whether the 7.16 miles of transmission line extending eastwards from Aguilares Junction to Mirando City and Oilton was shown to be necessarily used and useful in serving Laredo.

5. As to whether the Company's voucher J-10-156 (or 157) dated October 21, 1932, constituting journal entry of the transfer of the entire properties of South Texas Gas Company and Texas Border Gas Company upon the books of United Gas Public Service Company at $934,798.02 (including Roma-Jennings transmission line and much other property admittedly not used and useful in the service of Laredo) did not evidence the Company's valuation of same for capital account *on its books*, as of said date of October 21, 1932.

6. Preliminary and organization expense.

7. Administrative and legal expense.

8. Interest during construction.

9. Taxes during construction.

10. Engineering and supervision.

11. Going concern value; and whether it is essential that a separate allowance for same be made as such, besides valuing the component parts of the properties with full overheads and as a going concern, with trained personnel, and existing business attached.

12. Extent of accrued depreciation (per cent condition) of the properties.

13. Cash working capital.

B. OPERATING EXPENSES:

1. Propriety of 1c per MCF gathering charge for gas from Carolina-Texas Field charged to South Texas Gas Company by affiliate, Southern Gas Company.

2. Even if Pescadito-Jennings transmission line and East and West Jennings gathering systems be considered necessarily used and useful in serving Laredo, (which we do not admit is proper) the evidence shows only 1.53% of volume from Jennings Field actually sent to Laredo, but Company erroneously allocated 52.9% of Jennings gathering system expense to Laredo. (R. I, 558, R. II, 805).

3. Whether transmission system operating and maintenance expense within the Laredo area should be pro-rated to Laredo upon basis of volumes of deliveries in MCF as was done by the Commission's accounting witness, Lewis, or upon the basis of weighted lineal mileage and 3 inch equivalent pipe mileage as was done by the Company's accounting witness, Womack.

4. Propriety of "pipe line rentals" charged to South Texas Gas Company by affiliate, Southern Gas Company, for claimed use of transmission line from Jim Hogg Junction to Jennings Junction (see map, appendix to this Brief, or R. II, 1405), which line is plainly not used and useful or necessary in the service of Laredo, but is used exclusively in the service of Monterrey, Mexico, and other areas.

5. Propriety of management fees charged to the Company by affiliated holding companies.

6. Propriety of uncollectible bills.

7. Propriety of donations.

8. Propriety of general expense pro-rated from affiliated companies.

9. Actual cost of gas purchases; the Company attempting to add to the actual prevailing well-head prices certain claimed additional cost for geological and exploratory expenses.

10. The record shows that during 1930, when the Company's revenues began declining sharply due to the depression, its general expense, in contrast, rose

sharply and continued to rise throughout the year 1932. (See chart, R. II, 1380-A, also 761-763). This precludes the use of such operating expense for the purpose of showing confiscation in a rate case:

Reno P. L. & W. Co. vs. Comm., 298 Fed. 790, 801.

C. ANNUAL ACCRUALS TO DEPRECIATION RESERVE:

That not only were the Company's estimates of necessary annual reserve accruals to the depreciation fund for the future grossly excessive (5% on distribution properties, 6% on transmission properties, and 10% on gathering systems, R. I, 181-182, 708),[14] but the 3% allowed by the Commission was unduly liberal to the Company, as evidenced by the following facts:

1. The actual accruals to the reserve in the past had, as of October 21, 1932,[15] built up an unexpended

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[14]We are unable to reconcile the bases on which the Company calculated its "allowance for reserve" of $55,545.98 in its computation appearing at R. I, 201, and the amount of $66,039.00 "allowance for reserve" in R. II, 1352, as both computations were presented before the Commission, use the same claimed rate base, and are intended to reflect operations over the identical 12-months' operating period, ending July 31, 1932.

[15]The date on which the entire properties were transferred to United Gas Public Service Company (R. I, 238-A)

balance of $499,707.47, after being charged with all retirements, (R. I, 238A, 244) which sum is grossly out of proportion with the amount of *accrued depreciation* in the property, even as found by the Commission, and even more so when compared with the Company's claims as to accrued depreciation. The only evidence as to actual accrual rates employed by the Company in the past was, that from 1928 to June, 1930, it had been 2% on distribution and 3.75% on transmission, (R. II, 882-884, 1298-1299, 1329-1330). Indeed, it is strongly probable that the actual accumulation greatly exceeded the above figure; for Lewis, Commission's accountant, testified (R. I, 244) that it was impossible to ascertain the true balance, for there were several mergers, and each time the properties changed hands the accumulation was "wiped out and they started over."

2. If accrued historically from the beginning of the properties to July 31, 1932, at only 2% (as Elrod testified was adequate, R. II, 1332), the fund would have exceeded, by $5,557.83, the total charges to retirements. (R. II, 1374A).

3. At 3% the Company would have had a balance of $135,349.81 as of December 31, 1933. (R. I, 238, 238A, 245).

4. If set aside at 5%, the balance would have been $391,933.18 as of July 31, 1932. (R. II, 1374A).

5. There is inconsistency in the Company's method of computing future and accrued depreciation. In estimating accruals for future depreciation, it takes into account loss of service value brought about not alone

by physical deterioration, but by inadequacy, obsolescence, change of operating conditions, public requirements, lapse of age life, and all other causes; but in estimating the per cent condition of the property, for the purpose of determining the base upon which it shall be allowed to earn, it uses only observed depreciation, or physical deterioration which is palpable to the eye. (R. I, 364-367).

D. PROBABLE FUTURE REVENUES:

1. Probable increase of customer attachment and per-customer consumption under reduced rate.

2. Probable increase of consumption with returning purchasing power recently attenuated by economic depression.

3. Increase of consumption with return to normal temperatures from the admittedly abnormally high ones of 1933.

4. Propriety of deducting so-called "non-recurring" industrial revenues in estimating for the future and assuming there would be no other industrial sales to take their place.

5. The Company is estopped to urge that in estimating future revenues the so-called "non-recurring" industrial revenues derived in the past from sales to Central Power & Light Company, and the Company's affiliate, Motor Fuel Products Company, should be deducted; because the sharp decline and alleged non-recurrence of such revenues are shown plainly to have been well-known to the Company before the hearing by the Commission in October and November, 1932,

and the record reveals that the failure or alleged non-recurrence of such revenues was in no way pointed out or called to the attention of the Commission by evidence or otherwise in such hearing:

Western Distributing Co. vs. Pub. Serv. Comm. of Kansas, 58 Fed. (2d) 241, 243 (Aff. 285 U. S. 119; 76 L. Ed. 655);
St. Joseph Stockyards Co. vs. United States, 298 U. S. 38, 47-48, 53-54; 80 L. Ed. 1033;
Manufacturers R. Co. vs. United States, 246 U.S. 457, 470, 488-490; 62 L. Ed. 831;
C. N. O. & T. P. Ry. Co. vs. Interstate Commerce Comm., 162 U. S. 184, 196; 40 L. Ed. 935.

6. The record shows a deliberate driving away by the Company of its existing and potential industrial business and revenues in Laredo, resulting in an unjust and unnecessary loading of its Laredo operating costs.

7. The record shows flagrant and inexcusable discrimination against Laredo in the prices of industrial gas charged by the Company to industries in the twin city of Nuevo Laredo, Mexico, directly across the Rio Grande River, resulting in driving away profitable industrial business in and around Laredo, and in unduly burdening the Laredo operating costs.

8. The record shows gross discrimination against Laredo in the Company's charges for domestic gas in Laredo and its gate charge for domestic gas at the City gate of Nuevo Laredo, Mexico, which gas destined for Nuevo Laredo originates in the same sources of supply, is transported through the same transmission

lines, through the Laredo City Gate and through the Laredo distribution system, thus unduly burdening the Laredo operating costs.[16]

E. RATE OF RETURN.

1. The Company contends for a net return of 10% per annum; plus the following percentages for annual depreciation reserve:

5% on distribution property;

6% on transmission property;

10% on gathering systems. (R. I, 708).

If allowed, this sum would equal the entire cost of distribution property in approximately 7½ years; transmission property in approximately 6 years; and gathering systems in 5 years.

Under the 75c rate, voluntarily fixed and adhered to by the Company, according to its schedule before the Commission, for the 12 months' operating period ending July 31, 1932, it earned only 0.92% net, on its claimed rate base, after setting aside a composite of 4.43% for annual depreciation on all three classes of properties (R. I, 201).

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[16]See also R. I, 614, R. II, 1358-1364, 1364-1366, where it is shown that the Company was selling, for 12c per MCF, at the Roma gate, (47 miles south of the Jennings Field, R. II, 1217, 1405) gas obtained from fields in the Laredo area, and destined for Monterrey, Mexico, and other Mexican markets, and on which it is stipulated (R. II, 1361) that this price is calculated to yield the Company 10% net per annum on its investment.

According to its pleadings in the District Court (R. I, 40), after setting aside 3% for annual depreciation, as allowed by the Commission, it would, for the following periods, under the 75c rate, (which it alleged had been confiscatory since February, 1931) have earned only the following percentages on its claimed fair value rate base of $1,225,000:

For the 12 months Ended	Percent of $1,225,000
March, 1932	2.76%
July, 1932	2.48%
October, 1932	1.51%
December, 1932	1.80%
March, 1933	1.25%
July, 1933	0.44%
October, 1933	0.37%
December, 1933	Deficit of $1,037.05

The Company did not, until June 29, 1932, (R. II, 1353-1355) (nearly seven months after the City ordinance reduced its rates and seventeen months after it alleged the 75c rate had become confiscatory) apply to the City (and later to the Commission) for an increased domestic rate of $1.50 per MCF; under which proposed rate, according to its computation before the Commission, (R. II, 1352, 1352-A), it would only have earned for the year ending July 31, 1932, 4.57% net, upon its claimed rate base, after setting aside annual depreciation at a composite of 5.27% upon the three classes of property.

There is no evidence in the record before this Court that a 10% net return (after depreciation) is necessary to insure the Company's credit, or induce a free flow of capital.

The Commission found 7% net per annum would be *reasonable*.

The line of confiscation would be considerably lower than 7%, especially in view of the rate of net return (4.57%) which the Company has indicated, as above shown, that it would consider satisfactory and compensatory.

This Court should take judicial notice that the substantial net return which the Company is certain to earn under the 55c rate is not shown to be confiscatory.

Knoxville vs. Knoxville Water Co., 212 U. S. 1, 17; 53 L. Ed. 371, 381;
West vs. Chesapeake & Pot. Tel. Co., 295 U. S. 662, 683; 79 L. Ed. 1640, 1653 (dissenting opinion).

ARGUMENT

We adopt as a part of this Argument the preceding Summary. In the Argument we shall supplement the Summary only as to the particular points which seem to require elaboration and further record references; and in so doing we shall, so far as possible, divide and number the points of Argument to conform with the points in the Summary.

POINT I.

(See p. 16, supra)

At p. 75 of its Brief, the Company refers to the action of the City Council in reducing the rate as being "summary," thus leaving the inference that the action was taken without evidence or investigation. The record reveals that this matter was under investi-

gation and consideration by the Council for a period of more than nine months before the ordinance was enacted (R. I, 216A, R. II, 1280-1282, 737). And the record as a whole will reflect how secretive, misleading and non-cooperative the Company was, not only before the City Council (R. II, 1353-1355) but also before the Commission and District Court.

The Company pleads (R. I, 33) that the order of the Commission was entered "without notice." But see the same page where the Company pleads that it was made after full hearing. And the Commission's opinion (R. I, 11) recites that the hearing was had October 4-11, and November 9-14, 1932, at which time both parties presented their evidence, resulting in a stenographic record of some 1400 pages, and of more than 20 exhibits containing several hundred pages; and that after the hearing, counsel for the Company and the City prepared and filed with the Commission exhaustive briefs.

POINTS V, VI, AND VII.

(See pp. 18-20, supra)

The Company has attempted to make it appear that the Court of Civil Appeals has accorded it no judicial appellate review conforming to the requirements of the due process clause, under the *Ben Avon Borough* case, in that it has, in its opinion, indicated that it approached the review with its mind foreclosed against the Company; and that it has announced a rule which imposes upon utilities an impossible burden. The

argument is based principally upon the statement of the Court of Civil Appeals (R. I, 424, 89 S. W. (2d) 1102) "That in advance of any actual test of the practical result of the new rate the Court on appeal will not disturb the rate where it is based upon conflicting evidence as to valuation of property or as to any other item used as a basis for the calculation of the rate."

It is contended, first, (p. 30 of its "Statement as to Jurisdiction" and pp. 31-32, 53 of its Brief) that it was impossible for the Company to test the reduced rate in actual operation because the 40c ordinance rate was suspended from January 1, 1932, to June 13, 1933, by the appeal of the Company from the City Council to the Commission; and that subsequent to the Commission's order of June 13, 1933, the putting into effect of the 55c rate was prevented by the voluntary action of the Commission and City. The inference is that during both of said periods the Company was itself *restrained* from putting the reduced rate into effect. This inference is totally unfounded. It was the Company's own appeal from the City ordinance to the Commission, which originally suspended the effect of the ordinance rate; and it was the Company's own action in securing temporary restraining order and interlocutory injunction from the Federal District Court that caused the State, Commission and City to institute the suit in the State District Court, where, in order to comply with Section 266 of the Judicial Code as amended, it was necessary that the authorities consent to a voluntary stay order restraining *them* from enforcing the rate, (R. I, 33, 28-30). It is only the public authorities that have been under restraint from enforcing the reduced rate, and the Company has

been under no restraint at any time from voluntarily putting it into effect.

If the Company had given the reduced rate an actual test, and experience had shown it confiscatory, the Company had two effective remedies at its command, neither of which it has invoked: 1. Application to the Commission for modification before filing any suit. 2. Application to the three-judge court, after filing suit, pursuant to provisions of its stay order (R. I, 30) wherein jurisdiction is retained for all purposes.

It is argued, second, that under the rule announced by the Court of Civil Appeals it would be impossible for a utility ever to set aside a rate order because the Commission can always easily produce some evidence which has a tendency to substantiate the reduced rate, and thus make the evidence "conflicting."

It is necessary to distinguish between what the Court has said, and what it has done. *Dayton* case, 292 U. S. 290, 296, 298, 302, 303. What the Court has actually done, as will be seen by an examination of its entire opinion, is to review the Company's evidence in its entirety (though the Court did not, and was not required to, disclose in the opinion its entire reasoning and mental processes by which it arrived at its conclusion, nor review in detail all of the evidence): and, based upon such complete review and analysis of the evidence it concluded, as a preliminary question of law, that the Company's evidence was not sufficiently clear and satisfactory to overturn the *prima facie* validity of the Commission's order. (R. I, 414; 422, 89 S. W. (2d) 1097, 1101). In so doing it has but

followed the principle clearly laid down by it in *Railroad Commission vs. Shupee*, 57 S. W. (2d) 295, 301, aff. by the Supreme Court of Texas, 73 S. W. (2d) 505, 508, and which principle we have quoted in footnote 10, page 19, supra. That principle is in complete consonance with the method pursued by this Court in reviewing the evidence in cases of this type; some of this Court's decisions, so treating the matter, being cited under Points II, IV and XXII, herein.

It is further argued that the judgment of the Court of Civil Appeals was based upon an arbitrary rejection of the Company's evidence *in toto*, and an unquestioning acceptance of the Commission's evidence. How unfounded this argument is, becomes clear in the light of what we have said, and in the light of the Court's opinion as a whole. The Company has followed the same method in discussing the Court's opinion that it has in designating the parts of the record—it has selected only certain parts of the opinion, which, standing alone, seem most unfavorable to the Company; and has disregarded the remainder of the opinion.

The Company also argues that it has attempted vainly to secure a judicial review of its case, on the merits, in the Supreme Court of Texas; but we have already answered this contention at pp. 14-15, hereof.

POINTS VIII, IX, AND X.

(See pp. 20-22, supra)

The Commission made detailed findings as to allocations, preliminary and organization expense, ad-

ministrative and legal expense, engineering and supervision, taxes during construction, interest during construction, materials and supplies, cash working capital, fair value of gathering systems, transmission systems, and distribution systems used and useful, reproduction cost new of entire plant, accrued depreciation, and overall fair value of $885,000 as the rate base upon which the Company is entitled to earn a fair return; it found that neither the West Jennings gathering system nor the Pescadito-Jennings transmission line was used or useful, or even necessary as standby equipment, but nevertheless included those properties in the rate base at a value of approximately $135,000 (R. I, 13-25).

It found that inasmuch as all component parts of the property had been valued as a going, active concern, with all existing business attached, personnel trained, and with ample overheads allowed, therefore no separate allowance for going concern value as such should be made (R. I, 18, 25).

It also found that a depreciation reserve annually in the future, equivalent to 3% of its fair value of $885,000, would be "ample" (R. I, 21).

It found that a net return of 7% per annum upon such fair value would be "adequate" (R. I, 25).

Based upon a stipulation of the parties, it found that a wellhead price of 5c per MCF was reasonable for gas purchases (R. I, 11). It made certain subsidiary findings as to other future operating expenses, and disallowed one half of the 1c per MCF gathering charge imposed upon South Texas Gas Company by

it affiliated producer, Southern Gas Company (R. I. 23); disallowed all charges for "pipe line rentals" imposed upon South Texas Gas Company by its affiliated producer, Southern Gas Company, for purported use of the tie-in line (not necessary or useful in serving Laredo) between Jim Hogg Field and Jennings Junction;[17] disallowed management fees; and allowed "reasonable compensation" in connection with "loss on bad debts, general expense, advertising, maintenance of general structures, donations, testing mains for leaks, and Laredo rate case expense (amortized over a period of ten years)".

It did not make a definite dollar finding of the total amount of estimated operating expense for the future, or future revenues, but it did make certain subsidiary findings as to future revenues; and, taking into account the average of the four-year period beginning June 30, 1928, and ending July 31, 1932, it found that an average of the revenue and expenses for such four-year operating period "constitutes the test period for the computation of the rate structure upon which a fair return is to be predicated" (R. I, 22-23).

Based upon these findings it found that the 55c rate would produce a net annual return of 7% on the fair value.

Although the Company in its Brief seems to place principal emphasis upon its assignments contending that the 55c rate is actually confiscatory, yet under certain of its assignments it contends, (a) that the Commission's order is void for lack of essential supporting

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[17]See map, R. II, 1405, or appendix this Brief.

findings of fact, in that the Commission did not make exact dollar findings as to future operating expenses or revenue, and certain other facts subsidiary to those two elements of the rate structure, or as to the various elements of the rate structure for the 18 months for which refunds were ordered (the whole of 1932 and the first six months of 1933); and (b) that it has been deprived of that type of judicial review required by the due process clause, as interpreted in the *Ben Avon Borough* case, in that none of the State Courts has made detailed "independent findings of fact" upon each of the ultimate and subsidiary elements entering into the rate structure, as above outlined.

The cases which we have cited under Point VIII show conclusively that in the absence of some constitutional, statutory or court rule provision requiring findings of fact by the Commission or by the reviewing courts, such findings are not necessary to the validity of the Commission's order, or to the regularity and validity of a judicial review thereof. The Company has not cited, nor is there in existence, any provision of the Texas Constitution or statutes requiring any findings of fact whatever to be made by the Commission; and in this situation no such findings are required: *Texas Motor Coaches vs. Railroad Commission of Texas,* 59 S. W. (2d) 923, 926, aff. 123 Tex. 517, 73 S. W. (2d) 511; *Pacific States Box & Basket Co. vs. White,* 296 U. S. 176, 186; 80 L. Ed. 138; and even if such findings were required by some valid legislative rule, yet their absence would not entitle the Company to set aside the order unless it could go further and show substantive injury through actual confiscation: *United Fuel Gas Co. vs. Railroad*

Comm. of Ky., 278 U. S. 300, 309-310; 73 L. Ed. 390; *Premier-Pabst Sales Co. vs. Grosscup*, 298 U.S 226, 227; 80 L. Ed. 1155; *State Corp. Comm. vs. Wichita Gas Co.*, 290 U. S. 561, 568-569; 78 L. Ed. 500, 504; *Terrace vs. Thompson*, 263 U. S. 197, 214; 68 L. Ed. 255, 274.

As to the absence of judicial findings of fact the Company, at pages 46, 76 and 78 of its Brief, cites certain cases to the proposition that such findings are essential to *due process*. None of the cases supports the contention. With the single exception of one dictum, noted below, they do not relate to judicial findings, but only to findings by legislative or administrative agencies. They fall into two main groups—first, those involving specific State and Federal statutory requirements for such administrative findings, or the requirement of this Court's equity rule 70½, for judicial findings by inferior Federal Courts in equity cases, none of which requirements is applicable here; second, certain cases of which *Mahler vs. Eby*, 264 U. S. 32, 68 L. Ed. 549, is a typical example, where it is held, in interpreting statutes creating certain administrative boards or offices that the board or agency must make the necessary quasi-jurisdictional findings of fact to support its authority to act. In *Mahler vs. Eby*, supra, the Secretary of Labor was empowered to order the deportation of undesirable aliens only upon an affirmative finding of fact that the accused was not only an alien, but an undesirable one. No such finding had been made; and for lack of this quasi-jurisdictional finding the order was stricken down. No such situation is presented in this case.

The nearest the Company has come to showing that judicial findings are essential to due process, is a dictum in each of two cases:

In *Wichita R. & L. Co. vs. Commission*, 260 U. S. 48, 58-59, 67 L. Ed. 124, 130, the statute of Kansas empowered the Kansas Commission to reduce existing rates only upon an affirmative administrative finding, specifically required by the statute, that such existing rates were unreasonably high; and for lack of such finding, the order was (in the absence of a state court interpretation of the statute) stricken down; and in the course of the opinion, this Court merely remarked that "This conclusion accords with the construction put upon similar statutes in other states . . . Moreover, it accords with general principles of constitutional government."

In *B. & O. R. Co. vs. United States*, 298 U. S. 349, 368-369, 80 L. Ed. 1209, 1224, in affirming judgment upholding the validity of an Interstate Commerce Commission order, this Court merely remarked in dictum that the due process clause "includes the right to introduce evidence and have judicial findings based upon it." The cases cited by Mr. Justice Butler in support of that statement (headed by the *Ben Avon Borough* case) in no instance hold more than that due process requires an *open mind*, and *freedom to act*, with reference to the facts, upon the part of the reviewing court, (which, as already shown, the State courts had and exercised in this case), without being conclusively bound by the findings of the legislative or administrative body. And certainly none of them goes the length of holding, as is argued by the Company here, that due process requires actual, express and

detailed *judicial findings* in every case, whether required by statute or court rule or not.

XIII, AND XXVI, D, 1, 2, 3, 4, 6, 7 and 8.
(See pp. 23-24, 39, 40-41, supra)

The population of Laredo is approximately 35,000[18] (R. I, 332, 705; R. II, 944).

Mr. Strange, the Company's Vice President in charge of distribution activities, (R. I, 338) expressed the opinion that the point of customer saturation and maximum-per-customer-use had been reached in Laredo (R.I, 339; R.II, 1061), and that a reduction of rates in Laredo would not produce an increased number of customers, nor increased use per customer, but would result only in reducing the amount of net revenue (R. II, 1061, 1065). Stein, the Laredo District Manager, expressed the same opinion (R. I, 625-626, 630).

Strange admitted on cross examination that although the Company serves approximately 115 cities and towns in Texas, it had never reduced its domestic rates in any Texas town, and therefore, had no way of knowing whether or not increased consumption would follow a reduction in rates (R. I, 346; R. II, 1070). Strange attempted to bolster up his said opinions by a purported study of the experience following

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[18]The official United States census shows the following decennial population in Laredo:

Census, year 1910 14,855 inhabitants,
Census, year 1920 22,710 inhabitants,
Census, year 1930 32,618 inhabitants,

The number of meters and volume of consumption increased correspondingly over the same period. (R. I, 628-629).

a rate reduction in 1931 by another company operating in Amarillo, Texas, (where this Company does not operate, R. I, 346; R. II, 1070). He testified from hearsay that the existing rates in Amarillo had been reduced by 24.52% (R. II, 1066) as compared with the reduction ordered in Laredo of 18.5% (R. II, 1079), and that instead of increasing net revenues in Amarillo, the reduction was followed by a decrease of 23.34% in net revenues (R. II, 1066). Strange did not testify as to what year this claimed decrease occurred; but he was testifying in March and April, 1934, and it should not be difficult to surmise what year he chose. The comparisons between Amarillo and Laredo are set forth at R. I, 339-343 and R. II, 1062-1066.

Strange admitted that the circumstances at Laredo and Amarillo were not comparable, because Amarillo is located on the windswept, treeless, staked plains in the extreme northern Panhandle of Texas, where there is not even a native mesquite root for fuel consumption within a radius of 125 miles, and where the winters are very much more severe than in Laredo, the latter town being 800 miles South of Amarillo and having ample supplies of native wood in the surrounding territory, and having also large production of fuel oil and gas in numerous fields closely surrounding the City. He did not testify as to whether there was a competing gas system in Amarillo; nor did he testify as to the prices from which and to which the domestic rate was reduced in Amarillo, nor whether the rate reduction affected industrial and commercial sales, as well as domestic.

It is a matter of common knowledge that there is a point in the price of gas, or any other commodity, analogous to the point of diminishing returns, below which a reduction in rates will not produce increased consumption or net revenues. And it is obvious that in a place such as Amarillo, where the only competitive fuels are coal or petroleum and its products necessarily transported over long distances, the consumers are forced to attach to the gas system early and use gas continuously no matter what its prices.

Strange also testified that in Sinton and Robstown (of about 4,000 and 6,000 population respectively, located approximately 200 miles south and east of Laredo) the Company had experienced a greater per-customer consumption at higher rates than in Laredo; but, similarly, conditions were not shown to be comparable with Laredo (R. I, 341; R. II, 1062-1067).

The Company has always enjoyed a monoply of the gas business in Laredo (R. I, 702, 703).

Strange testified that the Company has never tried reducing its industrial rates to any customers in Laredo except the American Service Company, an ice plant which is purely a seasonal business, and the amount of its output is necessarily governed by the seasonal consumption of ice; and this occurred in 1932, (R. II, 1070), when the depression had affected all industries (R. II, 1072, 960).

On the contrary the record showed that the Company had arbitrarily increased its price for industrial gas in the second bracket from 16c to 18c per MCF, January 1, 1929, (R. I, 543-544, 700) and this increase in price had continued in effect until the trial in 1934. There is a strong suspicion, suggested in cross

examination of Company witnesses, that the Company not only refused to lower its industrial rate, but made this arbitrary raise, because Central Power and Light Company was contemplating building a new, enlarged plant in Laredo (Randall R. I, 548) and the Company feared the competitive electricity would trench upon its gas sales to irrigation plants up and down the Rio Grande River. But the trial court cut off cross examination along this line. (R. I, 547). See, however, R. I, 545, 546, 547, 548, 549, 550, 551; Neiswanger, R. I, 543-544; Stein, R. I, 610-611.

The effect of this policy upon industrial consumption in and around Laredo, including use for powering irrigation pumps up and down the Rio Grande River from Laredo, and that there is ample potential industrial revenue to offset the loss of the claimed "non-recurring" industrial sales, is reflected in the testimony of Neiswanger, R. I, 543-544; Randall, R. I, 109-110, 544-552; Stein, R. I, 610-611, 630-640; Martin, R. II, 939-941; Walker, R. II, 948-962; Hausmann, R. II, 962-971; Scales, R. II, 971-974; Irvin, R. II, 975-980; Lewis, R. I, 265-266, 290-291; R. II, 767.

The record exhibits some very striking discriminations against Laredo consumers, in favor of other nearby consumers, similarly situated. For instance it is shown that although all gas consumed in Laredo's twin city, Nuevo Laredo, just across the river from Laredo, is obtained by the Company from the same sources of supply, transported by it through the same transmission lines, through the Laredo city gate, and through the Laredo distribution system, as is the Laredo gas, (Lewis, R. I, 265, R. II, 766-767), the

Company only charges the Mexican distributing company in Nuevo Laredo 30c per MCF for domestic gas delivered at the International Bridgehead meter between the two points (Stein, R. I, 720); and it charges for industrial gas delivered at said meter for use in Nuevo Laredo only 12c per MCF as against 18c and 20c in Laredo (Stein, R. I, 721; Contract, R. II, 1356-1358). This 12c industrial rate for Nuevo Laredo is based upon 85% of 14½c; Martin, R. II, 939-941.

Strange admitted that the Company had reduced the price of industrial gas in Nuevo Laredo and that this had resulted in the re-attachment of industrial customers who had abandoned the use of gas on account of its price, and in an immediate increase in industrial consumption, although he said that because of the depression and reduced production, the industries were not using as much as they previously used, (R. II, 1070-1072).

The Company, also, was selling gas at the Roma gate (47 miles south of Jennings Junction, R. II, 1217; Map, 1405) for 12c per MCF, (R. I, 614; R. II, 1358-1364, 1364-1366); and it is recited in the Roma contract (R. II, 1361) that this price on gas, destined for Monterrey and other Mexican markets, is calculated to yield the Company 10% annual return on its investment.

During all these happenings, the depression was wreaking its havoc among the consumers (R. II, 885, 960, 1225, 1227, 1070, 1072; R. I, 86), though by March, 1934, conditions were improving (R. II, 960, 1056-1057).

On the other hand, the Commission's witness Martin, Mayor of Laredo, who had made a study of the Laredo situation and had known it for years, testified that in his opinion, under the 55c rate, there would inevitably be an increase of customers attached of approximately 1200 to 1500 meters (at a minimum rate of $1.00 per month each, R. I, 25, and a larger amount if their consumption exceeded that amount, R. II, 945, 1034, 1039). These additional minimum bills alone would produce a minimum gross revenue of $12,000 per year additional. Mr. Martin, in his study and estimate, took into consideration the comparative purchasing power of the potential new customers, the part of the City in which they resided and the amount of investment they would have to make in gas equipment (R.II, 945-947).

Mr. Martin further said that for more than two years before the trial in 1934, approximately 100 motor trucks had been hauling fire wood from his ranch, 65 miles northwest of Laredo, into the city for domestic fuel consumption, and making a good profit on it. His testimony is especially important. Besides estimating and measuring with the greatest practicable degree of certainty the amount of increased consumption to be expected under the reduced rate, he gave the factual data on which it was based. The particular features of his testimony may be found as follows: number of new customers, R. II, 1034; location of new customers in City, R. II, 1039-1041 and block map of City 1404; cost of customer installations of gas equipment, R. II, 947; amount of wood hauling, R. II, 945-946, 1033-1034.

The definite opinion that the ordered reduction would produce both a substantial number of new customers, and a substantial increase of use per-customer, was expressed by all of the following Commission's witnesses who were familiar with the situation: Walker, R. II, 948-949, 954; 960-961; Hausmann, R. II, 963-966; Hausmann testified also that his packing plant had been forced to abandon the use of industrial gas because of high price charged by the Company, and forced into the oil business in order to use fuel oil; and that his company would be glad to resume the use of gas if the price were lowered to that being enjoyed by the industries in Nuevo Laredo, R. II, 969-971; Scales, R. II, 974; Irvin, R. II, 978; Montgomery, Economics Professor in the University of Texas, specializing in study of public utilities, R. II, 1045-1051, 1050; Fowler, R. II, 1092, 1093. Walker testified he had observed a great deal more hauling of wood to Laredo for domestic fuel in the past two or three years than ever before (R. II, 954-955).

One of the Company's chief contentions has been that in order to serve gas cheaply and profitably it must sell large volumes and keep its line capacity fully utilized at all times (R. I, 598). This was the main basis on which it attempted to justify the low prices it had given to the Mexican markets of Monterrey and Nuevo Laredo. As to Nuevo Laredo, the only reason that exists for its sales there is to use up at a profit some of its excess line capacity leading to Laredo; for it was shown that the Nuevo Laredo gas all went through the Laredo facilities (R. I, 265, 766-767). But let us examine the Company's attitude when the subject

was broached of using up some of its excess Laredo line capacity by selling additional volumes to Laredo domestic and industrial users on the American side at a cheaper rate:

Company's witnesses Stein and Strange admitted that the Company does not wish to attach the additional domestic consumers in Laredo whom Mayor Martin testified could be induced to connect under a reduced rate; because, in their opinion, the customers would not be profitable—the cost of additional installations and service would exceed the additional revenue; (R. I, 343-345, 607, 630; R. II, 1067-1069). The Company did not, however, supply any underlying data on which that assumption was based. At p. 71 of its Brief the Company contends that it was the duty of the City and Commission to prove that the additional revenues would exceed the cost of additional service, and that their failure to do so is fatal. We emphatically question that contention. The knowledge as to the cost of additional installations and service was peculiarly within the knowledge and means of ascertainment of the Company. But, notwithstanding our repeated attempts to elicit from the Company's experts data showing such additional cost, they consistently failed and refused to produce any such data or even to express any general opinion about it. They not only professed their utter inability to figure the cost of additional service, but even expressed doubt or complete ignorance as to whether there was any excess line capacity leading into Laredo—and this in the face of the following overwhelming facts:

The peak consumption in Laredo was 1,022,849 MCF for the year ending June 30, 1930 (R. II, 765).

The low mark was 309,075 MCF for 1933 (R. II, 764). Any school boy would recognize that this means a substantial unused line capacity in the Laredo transmission facilities in 1932 and 1933. Yet repeatedly the Company experts would not admit the existence of any excess line capacity, and said they could not ascertain the cost of transporting and serving additional volumes: Strange, R. I, 347, R. II, 1072-1076, 1074; Abernathy, R. I, 663-665; Dickerson, R. I, 699-700; Womack, R. I, 590-602; Stein, R. I, 636-637, 639.

The City and Commission having shown that there would be substantial and definite additional revenue of at least $12,000 per year from the additional 1200 or 1500 domestic consumers who would attach under the reduced rate, even figuring them all at the minimum of $1.00 per month, the duty devolved upon the Company to show, if it could, that the cost of new installation and additional service would exceed the amount of the additional revenues. It not only did not prove this, but failed to adduce any evidence countervailing against the Commission's evidence upon these points.

The Company also based its conclusion, that the additional cost of service would exceed the additional revenue, in part upon its estimate of what the additional domestic consumers would use. To calculate this, it took the average domestic consumption for Laredo (3700 cu. ft. per month, R. II, 1067, 1077) for the admittedly abnormally warm depression year 1933 (R. I, 86), and estimated that the additional domestic consumers would in the future use less than half this low 1933 average domestic volume per customer.

Although in the calendar year 1933 the Company's net revenue reached the lowest ebb of its history—not only because of the depression and the admittedly abnormally high temperatures of the winter of 1932-1933 (R. I, 86), but because also of its arbitrary failure and refusal to reduce its domestic and industrial rates to conform to the times and the conditions, and its arbitrary raising of its industrial rates in 1929—yet the record shows that conditions were, at the time of the District Court trial in 1934, definitely on the upswing (R. II, 960, 1056-1057), and this court judicially knows that such improvement has continued. *B. & O. R. Co. v. United States*, 298 U. S. 349, 379, 80 L. Ed. 1209, 1230.

The operating figures in this record, subsequent to the date of entry of the Commission's order, cover a period of only a little more than six months (June 13 to December 31, 1933). And the 55c rate has never been actually put into effect.

The Company's Chief Rate Accountant, Womack, testified that in making his exhibits computing what he estimated the 55c rate would have yielded in 1932 and 1933, and would yield in the future, he assumed the actual consumption under the existing 75c domestic rate and the 18c and 20c industrial rates, and that no additional consumption would have been enjoyed under the 55c domestic rate (R. I, 584-586, 92-93, and Company's Brief, pp. 36-37).

In contrast to the Company's claim of complete customer saturation in Laredo, it is interesting to inspect the block-map of the city, furnished by the Company to the City as of March 9, 1931, soon after this rate

controversy had its inception, R. II, 1404. Observe what a small proportion of the entire area of the city is reached by the Company's existing lines. Martin's testimony showed that most of the new customers would be obtained in areas already reached by the Company's lines, (R. II, 1039-1041), but in addition this map shows large areas of the City not yet reached by the existing lines.

XIX

(See p. 28, supra)

The Company under its Point VIII, (Brief, pages 64-74), complains with extraordinary bitterness of the provision in the Commission's order requiring refunds from January 1, 1932, to June 13, 1933, (date of entry of the order) because, it says, the undisputed evidence shows that during the calendar years 1932 and 1933 its net earnings even under the 75c rate did not equal 7%—which, again, it erroneously assumes to be synonymous with "confiscation." We have endeavored to show, under our Point XVIII, supra, that not only the Commission in fixing the rate, but the reviewing courts in testing it for unreasonableness and confiscation, should not base the result solely upon the operating figures of any single twelve-months' operating period, no matter how normal, and especially should not do so when the selected period or periods are abnormal, as admittedly they are here; but should base their results upon the average of a reasonable spread of fat and lean years, so that the fluctuations, which inevitably will occur from year to year, from abnormalities of every kind—such as ab-

normally high temperatures, economic changes, and extraordinary expense of operation—will be ironed out on a level in a reasonable test period.

If our contention be sound, as we believe it is, from numerous authorities decided by this Court, then it is immaterial when the refund provision be made to attach and become operative—provided only it does not appropriate past earnings to justify actual present and future confiscation. The refund provision may as justly attach when the revenues happen to be below the average, as when they happen to be above the average—for the fluctuations are in their nature a self-levelling process, and will work out on the average above the level of confiscation in any event.

What the Company is really attempting to do is to claim the benefit of all fluctuations of revenue above the average, and escape the correlative obligation of accepting the fluctuations below the average. Put differently, under the Company's theory, it should be permitted to accept the super-average earnings, but increase its price every time the revenues drop to sub-average levels because of depression, hot weather, extraordinary operating expenditures, or any other causes.

If, considering the fluctuations likely to occur in the future, the 55c rate is on the average non-confiscatory in its operation prospectively from the date of the order (June 13, 1933), then it must follow that it would likewise be non-confiscatory in its operation retroactively, considering such fluctuations in the average computation, for the period of the refunds, Jan-

uary 1, 1932, to June 13, 1933. *Galveston Elec. Co. v. Galveston*, 258 U. S. 388, 400, 401, 403; 66 L. Ed. 678, 685, 686; *Ill. Cent. Ry. Co. v. Best*, 39 Fed. (2d) 658, 660 (three-judge court); and other cases cited under Point XVIII, supra, pp. 27-28.

The making of reparations for past overcharges is not a violation of the due process clause of the Federal constitution. *L. & N. Ry. Co. v. Finn*, 235 U.S. 601, 608-610; 59 L. Ed. 379; *Baer Bros. Merc. Co. v. D. & R. G. Ry. Co.*, 233 U. S. 479, 486; 58 L. Ed. 1055.

The Company contends that the refunds ordered by the Commission are retroactive in effect, and that it did not lie within the power of the Commission to make its order effective at a period prior to its date of entry, June 13, 1933. While this presents primarily a question of State law which has been determined adversely to the Company by the Court of Civil Appeals, as to the statutory power of the Commission to order refunds,[19] we are bringing the matter to the Court's attention here only in connection with the Company's

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[19]The Company's appeal from the city ordinance to the Commission did not have the effect of nullifying the 40c ordinance rate, but only of suspending its operation until the Commission should determine, (in the appellate action, in the nature of a review, as distinguished from a proceeding of original jurisdiction), what rate would be reasonable, and should by its order modify and make effectual the ordinance rate as of its original effective date, January 1, 1932. See Company's pleading, R. I, 32, alleging suspension of the ordinance rate. See also Article 6058, quoted in footnote 5, supra, p. 11; and Judge Blair's opinion, R. I, 426-428.

claim of confiscation through the refunds ordered for the year 1932 and to June 13, 1933.

In urging this proposition, the Company fails to bear in mind that these proceedings did not originate before the Commission, but had their inception in the passage of the City ordinance, December 15, 1931,[20] and that when it perfected its appeal to the Commission from the City ordinance, it voluntarily executed its appeal bond, expressly conditioned that it would:

> "Refund and pay to the City of Laredo for the benefit of the consumers in said City any excess of rates or charges collected by the principal, Texas Border Gas Company, over and above the rates and charges that shall be finally determined to be a fair and reasonable return upon the value of its property used and useful in supplying natural gas and natural gas service to the City of Laredo." (R. I, 59-60).

If the position taken by the Company on this point were correct, the conditions of its said bond, given on appeal to the Commission, would become meaningless, and could never be fulfilled. It was necessarily within the contemplation of the Company when it executed such bond, that the time of the promulgation of the Commission's order would be at a date *subsequent to* January 1, 1932, the effective date of the ordinance and of the appeal to the Commission.

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[20]The ordinance, by its terms, became effective January 1, 1932 (R. I, 26). Prior to that date (December 23, 1931, R. I, 60, 32) the Commission had, by virtue of the Company's appeal, already acquired jurisdiction of the parties and subject-matter. Pac. Coast Elev. Co. v. Dept. Pub. Works, 130 Wash. 620, 228 Pac. 1022, 1029.

XXVI.

(See pp. 34-43, supra).

It will be impossible, in a brief of reasonable length, to review in detail all of the evidence bearing upon the numerous points of controversy as stated in Paragraph XXVI of the Summary. Where further statement, record references and argument seem desirable, we shall set them forth; otherwise, we shall give only the record references bearing upon the particular point, in order that this Court may refer readily to all of the pertinent evidence, and determine whether or not it is sufficiently clear and convincing to show confiscation with that degree of certainty required by the previous decisions of this Court. See *B. & O. R. Co. vs. United States*, 298 U. S. 349, 372-373; 80 L. Ed. 1211, 1226, and cases there cited in footnote 33.

A. RATE BASE:

XXVI-A, 1, 2 AND 3.

(See p. 34, supra).

These points raise the question whether the Pescadito-Jennings transmission line and the east and west Jennings gathering systems were shown to be necessarily used and useful in serving Laredo. And, of course, if the Pescadito-Jennings line itself were not used and useful, it would necessarily follow that neither the east and west Jennings gathering system, nor the tie-in line between Jim Hogg Field and Jennings (on which the Company had been charging up "pipe line rentals" claimed to have been incurred and

due its affiliated concern, Southern Gas Company, as hereinafter discussed in detail) could have been used and useful; for it was only through Pescadito-Jennings line that any of the other properties could have served Laredo.

The Company (Brief, pp. 10-11) claims that this Pescadito-Jennings line was taken out of service in 1931 only temporarily for repairing leaks in two principal "hot spots." If this were true, however, it does not explain why the Company delayed starting the repair on the "leaks" until June, 1933, (R. II, 780) nor why, instead of being a matter only of repairing a few leaks it turned into a major job (R. II, 1103) of reconditioning and replacing practically the whole of the line, as shown more in detail hereinafter.

Incidentally, if Pescadito-Jennings line were to serve as a standby line to serve Laredo when other lines broke down, there is this fatal obstacle to the theory: There are 14 miles of main pipe line between Aguilares Junction and Laredo, which is the sole transmission line leading into Laredo (R. II, 1405, map or appendix, this Brief); and if a breakdown should occur in that 14-mile section, the town would be out of gas regardless of Pescadito-Jennings line's condition as standby equipment.

The Company does not even claim that Pescadito-Jennings line was used at any time during 1931, 1932, or until the fall of 1933, except for one day of "emergency service," which it claims occurred on March 13, 1932. (R. I, 231). This circumstance rested solely upon the testimony of Abernathy, Superintendent of Transmission operations, who had his

headquarters in Houston; and his testimony, besides being subject to the usual possibilities of error through defections of memory, etc., was totally unsupported as to the claimed date, by documentary or other evidence which would definitely and reliably fix the date. As against Abernathy's said testimony, the Commission's accountant, Lewis, examined all of the vouchers covering gas deliveries from the Jennings field to the Pescadito-Jennings line for the year ending July 31, 1932, and found no voucher covering any deliveries in March, 1932. (R. II, 886-888). In fact, he found only one voucher for the entire 12-months' period—showing one delivery on one day, and that was in August, 1931, (R. II, 1316-1317). This was apparently the one day of "emergency service" which the Company claimed had occurred on the convenient date of March 13, 1932, when there would probably have been cold weather and uninterrupted service would have been particularly important.

With respect to east and west Jennings gathering systems, the Company's own Engineer, Worsley, in writing to the City's Engineer, Neff, soon after the inception of this rate controversy, (October 7, 1931), stated (R. II, 1054) that his appraisal did not include any gathering lines. When confronted with this fact, Greene, another of the Company's engineers, who prepared its appraisal and testified before the Commission and District Court, called Worsley's effort a "horseback appraisal" (R. I, 684-685), although he testified Worsley was still in the employ of the Company as an engineer.

Before the Commission, (October and November, 1932) the Company gave not the slightest intimation

that it then entertained any intention of repairing or reconditioning the Pescadito-Jennings line. This line was originally built in 1916, (R. I, 225, 623, 216-A; R. II, 1405). The rate controversy between Company and City had its inception prior to February, 1931, (R. I, 216-A; R. II, 1280-1283, 1404, map). The line, in 1931 and 1932 was in such bad condition that it was wholly unserviceable.

Both Elrod and Shaw, engineers for the City, inspected this line in 1932, prior to the Commission hearings; and Elrod again inspected it in the early months of 1934, after the Commission hearings and after its reconditioning of 1933, but before the District Court trial. Shaw had been in the employ of the Company, and had many years of experience in constructing and maintaining gas transmission lines, (R. II, 1260-1263). Both testified that it was unfit for use before the reconditioning, and Elrod said that it still was after the reconditioning. (R. II, 1264-1266, 1001-1004, 1277-1280).

The testimony of the City before the Commission showed that the line was "porous like a sieve, full of holes", (Elrod, R. II, 1277; Shaw, R.II, 1265-1266).

Because of its bad condition, and of the fact that it had been used only once in the two years preceding the Commission's hearings, the Commission found (R. I, 16, 19, 24-25) that neither the Pescadito-Jennings line nor the east or west Jennings gathering systems were used or useful or necessary in the Laredo service, and that the line was not adequately protected with enamel or other coating; but, nevertheless it included the line and the west Jennings gathering system in the rate base.

Not even the Company's witnesses would testify that the line was used very much (see Abernathy, Superintendent of Transmission, R. I, 652, 653).

After the Commission promulgated its opinion and order of June 13, 1933, including the Pescadito-Jennings line in the rate base but finding that it was not used, useful or necessary, the Company began what was purely a build-up for the purpose of having the line included and held used and useful in the District Court trial then in imminent prospect. In the month of June, 1933, immediately following the Commission's order, the Company for the first time launched actively into its actual program of reconditioning the Pescadito-Jennings line, which it claims it had intended to do since the beginning of 1931. From June until the fall of 1933 it expended in excess of $33,000.00 in reconditioning and replacing sections of this line (R. II, 879, 780). Hargrove, who had been with the Company since January, 1928, and who was Vice-President in charge of transmission operations, testified (R. II, 1103) that this was the first repair work of any major importance ever done on this line since its original construction in 1916. The line was put back into partial operation in the fall of 1933, purportedly as standby equipment.

Even after this partial reconditioning, and in the early part of 1934 before the District Court trial, Commission's Engineer Elrod again inspected this line from end to end, and made detailed notes of its condition from pole to pole and from mile post to mile post; and its condition as then found by him is shown at R. II, 907-914. At R. II, 909, Mr. Elrod says "there was

one big leak that was whistling so that it could be heard for several pole lengths down the line." At R. II, 1001, he states that although gas was flowing in the line in the direction of Laredo, it was "leaking very badly." And at many other locations he noted bad leaks and bad conditions generally. Even the Company's witnesses recognized its still-existing bad condition, and said that they planned to do further extensive reconditioning, and thought that after completing the rehabilitation it would be in "very satisfactory working condition", (R. II, 1100), where Hargrove says it was in "bad condition" and "it was necessary to put new pipe in and recondition some sections of the old pipe and replace it."

Elrod's above mentioned detailed report of his last examination of the line, foot by foot, was admitted over the strenuous objection of the Company, (R. II, 911-912).

Even accepting the Company's claims at face value, of its intention of using this line at some indefinite time in the future to serve gas to Laredo from the Jennings and Martinez (Fansler) Fields, if and when that might become necessary, we think that in the most favorable light it shows only that at present and for an indefinite period in the future the line can be considered only useful upon remote and indefinite contingencies for rare emergency use as standby equipment; that even this use is not necessary; and, as pointed out by the Commission's opinion, the value of the line for such standby use has not been shown. Viewed in a less favorable light, we think the evidence shows only a vain attempt to get the line included in the rate base when there is no real necessity for it.

Both Lewis, Commission's accountant (R. II, 1317), and Abernathy, Company's Superintendent of Transmission (R. I, 652), testified that there were ample reserves of gas in the Carolina-Texas Field to meet all requirements at the present time of the entire Laredo area. See also, the open flow capacity of the wells in Carolina-Texas Field, R. I, 654.

Furthermore, the Company's witnesses testified that the checkered tie-in line between the Cole-Bruni Fields and the Carolina-Texas Field, while now being used to transport gas out of the latter field northward to San Antonio and other areas, was intended later to supply gas to Laredo from the tremendous reserves in Cole-Bruni Fields if necessary in the future. (Stein, R. I, 227, 228; Ivy, R. I, 355, 358; Greene, R. II, 1221; Stein, R. II, 1337).

The several large lines leading out of the area all tap the Carolina-Texas or Cole-Bruni fields. Information about these lines is given as follows: Ivy, R. I, 357-359; Abernathy, R. I, 653-656; Biddison, R. I, 707; Ivy, R. II, 1097-1098; Greene, R. II, 1222. Biddison, R. I, 707-708, admitted that these large lines, with their enormous investment, would not have been built unless the investors "knew or thought they knew there was a permanent supply of gas in that area." At R. II, 1099, the Company's Geologist, Ivy, admitted that there was much undeveloped gas reserve territory in the immediate vicinity. And the record reflects the experience of the Company that frequently when it began to appear that particular fields in the Laredo area were about to become exhausted, new strata or producing horizons would be

discovered in the same fields which would put them back into the class of large producers.

We think certainly the evidence is ample to show that the gas reserves in the Carolina-Texas and Cole-Bruni Fields are quite sufficient to supply the needs of Laredo and its surrounding markets at the present and for many years to come, without resorting to use of the Pescadito-Jennings line and the two Jennings gathering systems.

Even if it be granted (which it is not) that the Pescadito-Jennings line and east and west Jennings gathering systems are to any extent necessarily used and useful in service of Laredo, yet the evidence shows plainly that the Jennings Field wells and gathering systems are used almost exclusively for delivering gas into the Jennings-Roma line for delivery into Mexico; and it is shown that approximately four miles of the Pescadito-Jennings line at the southern end thereof is used exclusively for such deliveries. (R. I, 557, 569-570; R. II, 1321).

It is shown that the Company owns the largest well in the Jennings Field—Jennings Well No. 10—R. I, 557, 569-570. The Company made total deliveries from the Jennings Field into the Jennings-Roma line destined for Monterrey and other points in Mexico, totalling 1,806,640 MCF for the year ending December 31, 1933, R. II, 777. The number of wells in the field is shown at R. II, 1218-1219, and the location of these wells at R. II, 1324-1325. It is shown by the testimony of Abernathy, R. I, 650, that all of the gas purchased at 3c per MCF by the Company in the Martinez (Fansler) Field goes to Mexico.

XXVI-A, 4

(See p. 34, supra)

The Company's witnesses included in their appraisal 7.16 miles of transmission line extending eastward from Aguilares Junction to Mirando City and Oilton. A mere glance at the map (R. II, 1405 or Appendix to this Brief) will show conclusively that this branch of the pipe line system could not possibly be used or useful to any extent in serving Laredo. Greene testified that no gas had flowed through this line toward Laredo for several years (R. I, 678-679; R. II, 1209-1211). While the Company's witnesses did not allocate this line 100% to the service of Laredo, yet it did enter into their allocation and to this extent the rate base was unwarrantedly inflated.

XXVI-A, 5

(See p. 34, supra)

On October 21, 1932, the entire properties of the then existing Texas Border Gas Company and South Texas Gas Company were transferred to United Gas Public Service Company,[21] which transfer is reflected

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[21]The transfer was made in the interim adjournment between the two hearings by the Railroad Commission. The City and Commission, and their witnesses, did not learn of the voucher entry until the Commission's Accountant Lewis, after entry of the Commission's order of June 13, 1933, made his supplemental audit of the Company's books to bring it down to December 31, 1933, for use in the District Court trial. The Commission, therefore, did not have this information available at the time it fixed fair value for the purpose of the

on the Company's books and is evidenced there by a voucher entry as of that date,[22] reciting "to record acquisition of properties, assets and assumption of liabilities of South Texas Gas Company under agreement dated October 21, 1932" (R. I, 732); the properties so conveyed included not only those used and useful in serving Laredo, but all the Company's additional properties, embracing the Roma-Jennings transmission line completed in the year 1929, and the distribution systems serving the six other towns named at R. II, 766. The cost of the Roma-Jennings line alone had previously been set up on the Company's books at $848, 232.98, (R. I, 732).

The Commission's Accountant, Lewis, when questioned as to the source from which he obtained the voucher and the purported effect of that voucher entry on the Company's books, stated that upon making

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21 (Cont'd)
order. The entire transaction was, at the time of the District Court trial, fresh in the minds of those connected with the Company who had knowledge of the entire transaction. None of such witnesses was produced by the Company, nor were any of the supporting books and records produced. At pp. 8-9 of the Company's Brief, it attempted to explain away and dismiss the whole matter in ten lines by saying that the transfer involved cancellation of outstanding stocks, bonds and securities, based entirely upon the opinion and conclusion of the witness Phillips.

[22]Reflecting a book value of $934,798.02, from which should be deducted accrued depreciation, as shown on the books, of $78,632.20, (R. I, 733).

inquiry of those in charge of the Company's Accounting and Construction Departments he was definitely advised that the said sum of $934,798.02 represented the total *value* at which those properties were taken over (R. II, 837); and that the transcript of the fixed capital account of the Company, furnished to him by the Accounting Department, was intended to and did reflect the said entire transaction and the manner in which the Company treated it on its books. Lewis further testified that in response to his request for complete and detailed information as to the nature and character of the transfer of properties, he was advised that the aforementioned voucher and transcript were the only instruments and information that could be furnished him purporting to set forth the entire details of such transfer (R. II, 840). Upon inquiring further as to his difficulty in making a "reconcilement between the figures" of the South Texas Gas Company and Texas Border Gas Company, and those of the United Gas Public Service Company, he was advised by the Accounting Department and their Chief Accountant Womack "that such reconcilement was not available" (R. II, 840-841).

The Company thereupon launched a vigorous attack on Lewis as to his interpretation of the voucher entry reflecting the sum of $934,798.02 as the total value of the properties so acquired and in that connection employed for that specific purpose an Accountant, Phillips, who previously had had no connection with the Company and was entirely unfamiliar with the Company's books and records, having had occasion to examine such records for a period of unstated duration, only a week or ten days

prior to the time that he was called upon by them to give his testimony (R. II, 1108). Although promising to produce the original voucher (R. II, 841) the Company failed to do so; and although its Chief Accountant Womack, who was thoroughly familiar with the Company's books and records, and from whom Lewis received the detailed information relative to the voucher entry, was available during the entire time of the trial, he was never called upon by the Company to take the witness stand and change, modify or explain away, if he could, the factual information he had furnished Lewis and the interpretation of the voucher entry that Lewis had given, based upon such information.

The Company, instead of using its Chief Accountant Womack, or some other Company witness who was, or was presumed to be, thoroughly familiar with the entire transaction, to explain it or produce record entries doing so, was relying merely upon its attempt to have the witness, Phillips, from his superficial examination of the voucher and of the records in connection with it, state merely his opinion and conclusion as to what the voucher reflects. Upon the Commission's objections to such testimony from Phillips, upon the ground that the voucher and other Company records were the best evidence, the Court sustained the Commission's objections (R. II, 1107) and thereafter the Company made no further attempt to produce the voucher itself or any other record or testimony explaining it.

This failure or omission on the part of the Company leaves its evidence upon this point fatally de-

ficient so far as concerns meeting the burden of proving by clear and satisfactory evidence that this voucher does not truly reflect the valuation for capital account placed upon the total properties as transferred of $934,798.02 on the Company's books; which, as before pointed out, embraces the Roma-Jennings line and other lines and properties not used and useful in serving Laredo, as well as distribution systems in six other towns (Footnote 1, p. 7, supra; R. II, 766). See *Great Northern R. Co. vs. Washington,* ..... U. S. .....; 81 L. Ed. ..... (Advance Op. No. 7, p. 350 No. 20—October Term, 1936—Dissenting opinion, p. 361); *Kings County Lighting Co. vs. Lewis* (N. Y. Sup. Ct.) 110 Misc. 204, 180 N.Y. Supp. 570, 584.

In *San Diego L. & T. Co. vs. Jasper,* 189 U. S. 439, 443-444; 47 L. Ed. 892, 895; *Great Falls Gas Company vs. Public Service Comm.,* 34 Fed. (2d) 297, 299; and *Fort Worth Gas Co. vs. City of Fort Worth,* 35 Fed. (2d) 743, 747, it is held that a public utility's tax rendition statements are admissible against it as bearing upon the values of its properties in rate cases, when such statements are made by its authorized officials. By plain analogy the Company's voucher entry in this instance likewise possesses the same strong probative force—especially when unexplained as here.

XXVI-A, 6, 7, 8, 9, 10

(See p. 35, supra)

These items include the five undistributed overheads and cash working capital. The estimates for the Company were made primarily by the Company's En-

gineer Greene. To bolster up his estimates, the Company employed the professional witness, Biddison. Although the Company (Brief, p. 41) attempted to make it appear that this witness was a novice in testifying for utilities in rate cases, the record reveals that he was, and had been, employed almost exclusively by utilities, for over 25 years, and had never testified for any but public utilities (R. II, 1223-1224, R. I, 666-667, 709-710), was under annual retainer by the Lone Star Gas Company's system at the time, and was hired at a salary of $100.00 per day, plus expenses, to testify for the Company in this case. His testimony, in upshot, was that he had examined the appraisal prepared by the Company's Engineer and that it met with his blanket approval.

We need not detail the evidence upon these points, but shall only give the record references, so that the Court may examine them and see whether the Company's evidence was sufficiently clear and satisfactory to establish confiscation.

6. Premliminary and Organization: (Commission's findings) R. I, 21; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 330; R. II, 900-907, 924-928, 1249-1254.

7. Administrative and Legal: (Commission's findings) R. I, 21; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 330; R. II, 900-907, 924-928, 1249-1254.

8. Interest during Construction: (Commission's findings) R. I, 21; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 330; R. II, 900-907, 924-928, 1249-1254.

9. Taxes during Construction: (Commission's findings) R. I, 21; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 330; R. II, 900-907, 924-928, 1249-1254; (Exhibit showing taxes actually paid by Company two years following construction of plant, 1911-1912) R. II, 1372-1373.

10. Engineering and Supervision: (Commission's findings) R. I, 21; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 330; R. II, 900-907, 916-921, 924-928, 1088, 1249-1254.

13. Cash Working Capital: (Commission's findings) R. I, 16; (Biddison) R. I, 184-191; (Elrod) R. I, 203-214, 318-320, 330; R. II, 900-907, 1009-1013, 1249-1255.

With reference to all of the five undistributed overheads, see the exhibit setting forth the elaborate thesis and set-up of the Company's Engineer Greene, R. I, 159-166.

Here, as usual, the utility has estimated overheads greatly in excess of those historically incurred, as testified by Elrod, or which would be incurred in event of reproduction. See *United Fuel Gas Co. vs. Public Ut. Com.*, 14 Fed. (2d) 209, 214, Aff. 278 U. S. 322, 73 L. Ed. 402.

XXVI-A. 11

(See p. 35, supra)

Going concern value: In its exhibit before the Commission, the Company computed the several amounts separately that it claimed inhered respectively in the distribution, transmission and the gathering sys-

tem properties (R. II, 1230-1232, 1233-1235, 1342-1350) for a total of $187,784.00, (R. II, 1348-1349); the amount was later reduced in the testimony to $155,082 (R. II, 1231, R. I, 18); the cost of attaching business was considered by it as a substantial item embraced in said total, but when the Company's witness, Strange, was interrogated about his opinion as to "the cost or expense to the South Texas Gas Company" (transmission company) of attaching its business, he replied that he could not and would not attempt to estimate it; (R. II, 1234). Obviously there could be no cost incurred in attaching business to the South Texas Gas Company (transmission line) or to any of the gathering systems, as their only customer was their affiliate distributor, the Texas Border Gas Company. In this connection it is of particular interest to note that the amount the Company originally claimed for its transmission system is set at $99,115.00, whereas that set for the distribution system is considerably less, namely, the sum of $84,290.00 (R. II, 1348). Strange was interrogated as to this point while testifying before the Commission, and admitted that most of the cost of attaching business, concerning which he had previously testified at length, would be incurred by Texas Border Gas Company, the distributing company (R. II, 1235).

Before the District Court, the Company made a complete change of its computation, and set forth its estimate in a lump sum, distributing it to the property overall, and without segregating it between the gathering, transmission and distribution systems. It also reduced its estimate from $155,082.00 to $120,000.00 (R. I, 176-178).

The Company's hired expert, Biddison, both before the Commission and the District Court, although having no knowledge whatsoever of the history of the Company, (R. I, 676, 673-677) attempted to support the said estimates of the Company's witness Greene *in toto*.

The Company, from the very outset of this proceeding before the Commission, and continuing throughout the trial in the District Court, persistently and consistently objected to the introduction or consideration of any evidence pertaining to the past history of the Company, which this Court has repeatedly held is an essential factor in determining whether going concern value inheres in the property and if so, in what amount. *Houston vs. S. W. Bell Tel. Co.*, 259 U. S. 318, 325,[23] 66 L. Ed. 961, 965; (R. II, 1272, before the Commission; R. II, 745, 749-750, 763, 881, 1057). The history is equally important and enlightening upon all other phases of the case.

There was controversy between the parties, both before the Commission and Court, as to whether it was necessary that a separate sum be allowed for going concern value, as contended for by the Company, or whether it was sufficient, as contended by the Commission and as done by the Commission's witness Elrod, to make no separate allowance for going concern value as such, but to include the going concern value in valu-

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[23]Page 325: "Whether going concern value should be considered and allowed at all in determining the base for rate-making, and, if allowed, what the amount of it should be, depends upon the financial history of the Company."

ing the component parts of the physical property as parts of a going concern, with personnel trained and existing business attached, and allow full overhead expenses and other intangible values. See *Los Angeles G. & E. Corp. vs. RR. Comm. of Calif.*, 289 U. S. 287, 302-303, 313-319; 77 L. Ed. 1180, 1191, 1196-1200, and cases there reviewed. See also *St. Joseph Stock Yards Co. vs. United States*, 298 U. S. 38, 62-64; 80 L. Ed. 1033, 1047-1048.

The Commission acted upon the latter plan. (R. I, 17, 18, 24).

The Company endeavors to make it appear that the Commission's Engineer, Elrod, did not include any value for going concern at all, and with a view of making this appearance, has set forth in the record clipped excisions from his testimony (R. I, 214, 313). A reading of the following record references, however, will show how those excerpts read in connection with their full context; and, in that light, they exhibit quite a different picture. These record references make it plain that Mr. Elrod made full and ample allowance for the element of going concern value though not as a separate lump sum allowance, but in valuing the component parts of the property as elements of an active, going concern, with personnel trained, existing business fully attached, and with ample allowance for all overheads and other intangible values: (R. II, 907, 915-916, 1016-1017, 1256-1259, 1268, 899, 1025-1033). At R. II, 1025, Mr. Elrod explains that he had misunderstood the Company's counsel in giving his previous testimony, quoted by the Company at R. I, 214, 313.

XXVI-A, 12

(See p. 35, supra)

Accrued Depreciation: The Commission found the over-all properties to be in 78% condition of new, (R. I, 18-19). In the light of the evidence, we think this was over-liberal. The Commission included in the rate base the Pescadito-Jennings transmission line, and we have already been at some pains to detail the dilapidated condition of this line which rendered it unserviceable, even after the expenditure of more than $33,000 in rehabilitation in 1933. The Company, in estimating the amount it claimed necessary to accrue to the depreciation reserve for the future, (5% on distribution, 6% on transmission, and 10% on gathering systems, R. I. 708), took into consideration the loss in service value resulting not only from physical deterioration but from inadequacy, obsolescence, public requirements, and all other non-physical causes; but in arriving at the purported per cent condition of the property (see appraisals of Company's engineer, Greene, R. I, 151-152, 174-175), it used only "observed depreciation" or physical deterioration which was palpable to the eye. It gave no effect in accrued depreciation to the age-life method at all; and obviously, it is impossible to "observe" even all of the physical deterioration by such casual inspection methods as the Company used. (Biddison, R. I, 366-367; Shaw, R. II, 1265).

In contrast, Elrod, gave effect to a combination of the observation method modified by a reasonable application of the age-life method, (R. II, 929-938, 989-1009, 1247-1249).

It is also interesting to compare the amount of the unexpended balance in the depreciation reserve fund, which the Company had actually accumulated, with the amount of accrued depreciation as found by the Commission and as claimed by the Company. Theoretically, of course, the unexpended reserve fund should equal the accrued depreciation in the property, if a proper balance is maintained in the relation of the two items. As of October 21, 1932, when the United Gas Public Service Company acquired the properties from South Texas Gas Company and Texas Border Gas Company, the books then showed a reserve accumulation of $499,707.47 (R. I, 238. 241). It is strongly probable that the actual accumulation exceeded the above figure; as Lewis, Commission accountant, testified (R. I, 244) that it was impossible to ascertain the true balance, for there had been several mergers and each time the accumulation was "wiped out and they started over."

XXVI-A, 13

(See p. 35, supra)

Cash Working Capital: The Commission allowed as cash working capital the usual 45 days' operating expense, plus gas purchases. It is usual to eliminate gas purchases from cash working capital, because the monthly remittances, especially under a continuous meter reading and billing program, such as the Company used in Laredo, reach the Company from the customers in sufficient time and amounts to pay for its gas purchases before they are billed to it; and this reason applies with especial force where as here, the distributor is purchasing its gas from an affiliated pipe

line company and where the Company, as here, obtains a large portion of its gas from its own wells or other affiliates.

Record references: (Elrod), R. II, 1009-1013, 1255).

RATE BASE IN GENERAL.

The Company, at pages 40, 43, 59 of its Brief, launches an acrimonious attack upon the qualifications, credibility and soundness of the methods of approach of the Commission's witness, Elrod, who, it says, was the only engineering witness testifying for the Commission. We refer the Court to the testimony of the Commission's other engineering witness, J. D. Shaw. As will appear from his qualifications (R. II, 1260-1263), Mr. Shaw was a thoroughly experienced, seasoned, and qualified engineer who had for many years been engaged actively in the business of building, constructing, and supervising natural gas properties and had been in the employ of the Company itself for several years. He, together with Engineer Elrod, prepared the engineering appraisal which was presented on behalf of the City before the Commission, (R. II, 1264). Mr. Shaw also made an actual inspection of the Pescadito-Jennings transmission line, (R. II, 1265-1266), and testified that it was not in serviceable condition, and he did not see how the Company could use it. Naturally, Mr. Shaw and Mr. Elrod, having jointly prepared the City's appraisal, were in accord upon all items entering into it.

Furthermore, while, as we have pointed out under Point XI (supra, p. 22), the Company does not prove

its case of confiscation by attacking the evidence of the opposing party, yet we cannot permit to go unchallenged the Company's unwarranted attack upon Mr. Elrod's qualifications and methods of approach. His qualifications are outlined at R. II, 1241-1244; and from that statement, the Court will perceive not only that Mr. Elrod possesses unusually high qualifications as an engineer, but that his testimony has been considered by this Court, and favorably upheld, in more than one rate case—the Galveston Electric Company Case, and the Brush Electric Case. His general methods of approach are outlined in R. II, 1266-1269, 921-924, and 980-1013.

At R. II, 1244-1245, 1260 and 1276, Mr. Elrod explains why engineers employed by municipalities to give valuation testimony in rate cases find it virtually impossible to obtain from manufacturers, jobbers, and contractors, the true and lowest figures at which the property could actually be constructed, the reason being in substance that it is always known that the estimates are desired only for valuation purposes and not actual construction, hence the informant has no incentive to give the greatest discounts and lowest bids as he would do if he had a real hope of obtaining the order for the work; and at the same time, they are reluctant to give estimates which are adverse to the very people who would be potential and prospective purchasers or employers if actual construction should be undertaken.

The Company claimed that there was not sufficient data in existence upon which to arrive at a reliable estimate of historical cost; that the early records of the

Company were not complete and accurate; and that not all of the overheads had been capitalized. (R. I, 99). It therefore relied solely upon reproduction cost new, less observed depreciation, as the sole measure by which to arrive at fair value—and objected strenuously and repeatedly to all evidence of an historical nature pertaining to any phase of the Company's properties and business, for any purpose, or as applied to any phase of the case; these objections reaching not merely the earlier periods when it claimed the records were not reliable, but extending to all years prior to the year ending July 31, 1932, before the Commission, and prior to 1932 before the courts; R. I, 736, R. II, 745, 749-750, 763, 881, 1272; and many others.

Notwithstanding such attitude on its part, it plead (R. I, 39) that the historical cost of the property exceeded $1,200,000; and from Par. F, R. I, 34, it appears that this means only the property used and useful in serving Laredo. This would leave the inference that the Company had segregated that property within the Laredo area used and useful in serving Laredo from that which was not—an inference which, as we shall later make plainer, was totally unfounded.

When Womack was asked why the Company had pleaded $1,200,000 historical cost, he replied he had never seen that figure before, that it was a ledger figure but did not include all values properly capitalizable, R. I, 99. Although pleading historical cost, the Company offered no evidence of historical cost at all, either segregated or unsegregated.

The Commission's accounting witnesses, however, assuming a burden that was the Company's and not

the City's or Commission's, compiled exhibits showing as accurately as the books and records reflected, the total historical cost of all the Company's property which the United Gas Public Service Company acquired from Border Gas Company, South Texas Gas Company, and Texas Border Gas Company. That before the Commission (R. II, 1374A) extended to July 31, 1932, and that before the District Court, (R. I, 237-238A), supplemented the property by net additions to December 31, 1933. Both exhibits show the properties unsegregated as between those which were and were not used and useful to Laredo. The exhibits went in over the Company's vigorous protest, as did all historical data. (R. II, 1272, R. I, 736).

The starting point for these exhibits was the actual inventory of the physical properties of the original Border Gas Company, made at the beginning of that company's operations, supplied by the Company to the City's accountant Kinney, and used by the Company for many years as the basis for adjusting its federal income tax accounts with the Internal Revenue Department. The starting figure was $166,966.68, which figure was arrived at by crediting the total investment of $179,101.10 (R. II, 740) with materials and supplies amounting to $12,104.42, which latter figure found its support in actual journal vouchers, on which the Company was computing its depreciation, R. II, 742, 743.

The Company points out, p. 39 of its Brief, that the Commission has not made any segregation of the property used and useful in the Laredo service in connection with these historical cost exhibits, and argues

that the burden was upon the City and Commission to do so, although it admits (same page) that "the unit for rate making purposes was the area within the corporate boundaries of Laredo." A short and complete answer to that is, that the duty did not devolve upon the City or Commission to make such a segregation, but rested rather upon the Company, and has not been discharged: *Norfolk & W. R. Co. v. North Carolina*, 297 U. S. 682, 689-690;[24] 80 L. Ed. 977, 982-983; *Great Northern R. Co. v. Weeks*, 297 U.S. 135, 143-145; 80 L. Ed. 532, 538-539; *Smyth vs. Ames*, 169 U. S. 466, 541, 42 L. Ed. 819, 847; *Simpson vs. Shepard* (Minnesota Rate Cases), 230 U. S. 352, 465-466, 57 L. Ed. 1511, 1568; *Smith vs. Ill. Bell Tel. Co.*, 282 U. S. 133, 148-149, 75 L. Ed. 255, 263.

The City, Commission and Court were entitled to all the light that could be thrown upon the questions before them; and the burden rested upon the Company to furnish that information: *Norfolk & W. R. Co. vs. North Carolina*, 297 U.S. 682, 689-690;[25] 80

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[24]P. 689: "All this becomes the plainer when we recall that the State in presenting computations did not lift the burden from the railway of satisfying the court, after all the evidence was in, that it was a victim of oppression. If different or supplementary computations were needful to that end, the railway, not the State, was under a duty to submit them."

[25]See quotation in footnote 24, supra.

L. Ed. 977, 982-983; *Knoxville vs. Knoxville Water Co.*, 212 U. S. 1, 18;[26] 53 L. Ed. 371, 382.

If the Company had discharged its burden of showing historical cost to the best of its ability, and of segregating the Laredo used-and-useful property from the remainder, this would have given the public authorities an additional element well worth taking into consideration in arriving at fair value. If the Company had sustained its burden of segregating the properties, then whether fair value had been viewed in the light of segregated historical cost or segregated value on the basis of its $934,798.02 voucher entry valuation for capital account on its books, the resultant fair value would have been even lower than the $700,000.00 reproduction cost new estimate submitted by Elrod—and doubtless it was the realization of this fact that motivated the Company in making no attempt at giving historical cost or making a segregation.

B—OPERATING EXPENSES:

XXVI-B, 1

(See p. 35, supra)

1c Gathering Charge, Carolina-Texas Field: When the Company completed construction of the Jennings-Roma transmission line late in 1929, (R. I, 227,

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[26]P. 18: "The city authorities acted in good faith, and they tried, without success, to obtain from the company a statement of its property, capitalization, and earnings . . . . the companies to be regulated will find it to their lasting interest to furnish freely the information upon which a just regulation can be based." See R. II, 1353-1355.

R.II, 749, 1318-1319), the South Texas Gas Company began taking heavy withdrawals from the Jennings field destined for Monterrey, Mexico, through the Jennings-Roma line. R. II, 872, 778-779, 1218-1219. This resulted in lessening the amount of gas from the Jennings field available for Laredo and necessitated the taking of a corresponding amount for Laredo from the Carolina-Texas field.

On November 1st, 1929, (R. II, 1366-1369), South Texas Gas Company entered into a contract with its affiliate producer, Southern Gas Company, to purchase from it gas from the Carolina-Texas field at the rate of 5c per MCF, and in addition, to pay a gathering charge of 1c per MCF, purportedly for use of the Southern Gas Company's gathering system in the Carolina-Texas field. Prior to that time gas had been purchased in that field by South Texas Gas Company from Southern Gas Company without payment of any gathering charge.

See also Abernathy's statement that this is the only gathering line charge ever made by the company, (R. II, 1340).

It is evident that if there were any necessity for the gathering charge in 1929, that necessity was brought about by the completion of the Jennings-Roma line, so that any increased cost of gathering gas was due to the new demands for gas to be transported into Mexico; and the city of Laredo should not be penalized to the extent of 1c per MCF, or any other amount, simply because South Texas Gas Company needed the gas for other markets, (R. II, 871, 872).

Furthermore, although South Texas Gas Company had on April 9, 1928, acquired from Border Gas Company title to certain gathering system properties in Carolina-Texas field, (R. II, 1134-1136), the Company did not include those gathering system properties in its appraisal at all. This omission was apparently made deliberately in order that the Company might more plausibly bolster up its claim to the 1c gathering charge, (R. II, 1220).

The Commission, (R.I, 23), approved the gathering charge as to propriety, but after taking into consideration all available data in connection with it, allowed only ½ c per MCF gathering charge. Under the record, we think the charge should be totally eliminated. See Lewis, R. II, 757-761, 871-872, 1318-1321.

XXVI-B, 2

(See p. 35, supra)

We have attempted to demonstrate that the Pescadito-Jennings line should be excluded from the rate base entirely, and if this is done, it necessarily follows that east and west Jennings gathering systems must likewise be excluded.

Under no theory could the East Jennings gathering system be considered used and useful to [illegible]edo. It is typical of the Company's methods in [illegible]eral, however, that it has included in its valuations, besides the Pescadito-Jennings line, both the east and west Jennings gathering systems, prorated; and in prorating the operating expenses of the east and west Jennings

gathering systems, it has allocated 52.9% thereof to Laredo, (R. II, 805), although it is undisputedly shown that in 1933 when the Company began trying to use Pescadito-Jennings Line again, only 1.53% of the volume of gas from the Jennings field was actually sent to Laredo, (R. I, 558).

XXVI-B, 3

(See p. 36, supra)

There was disagreement between the parties about the basis of apportionment of transmission system operating and maintenance expenses within the Laredo area. The Company prorated them upon a weighted basis of the two factors, lineal mileage of pipe and miles of 3" equivalent pipe, which had the effect of loading Laredo operating costs with three or four times as much expense as under the method used by the Commission's accountant, Lewis, who apportioned them upon the basis of MCF volumes of deliveries. The Company's method resulted in loading Laredo with costs which were properly chargeable to the Jennings-Roma line. Mr. Lewis' reasons for apportioning upon the basis of volumes in MCF are very plainly stated at R. II, 767-777, 793-794, 797-801, 806-811, 817-836, 821, (utilizing five-year experience); 888-889, 1297-1298, 1308-1314, 1321-1324, 1325-1326).

XXVI-B, 4

(See p. 36, supra)

Pipe Line Rentals: Here was another bald faced build-up by which the Company padded its operating

expenses loaded onto Laredo. When the Jennings-Roma line was completed in December, 1929, the Company constructed a tie-in line between Jennings Junction and Jim Hogg field, which line is shown in checkered colors on the map at R. II, 1405, or appendix, this brief.

The purpose of this line was to augment the supply destined for Monterrey, Mexico, (R. II, 1335-1336), from the Cole-Bruni fields and the Jim Hogg field, (R. II, 1222).

Although no gas coming through this tie-in line has ever been served in Laredo, and so far as the record reflects, never will be, the Company, at the end of 1929 began charging large amounts of purported "pipe line rentals" to the Laredo operations, (Lewis, R. II, 873). The Company attempted to show that some of the gas coming through this line was transported from Cole-Bruni field through the rented line to Jennings Junction, thence through the Jennings-Pescadito line to the main line into Laredo. It developed, however, that at the time the Company claimed this was being done, there was not even any physical connection between the rental line and the Jennings-Pescadito line.

When this rate controversy had its inception just prior to February, 1931, the city's engineer, Neff, called upon the Company for a map showing the transmission properties which it claimed were used and useful in serving Laredo. In response to that request, the company furnished to the City its map, (R. I, 216-a), and all of the maps appearing at R. II, 1397-

1403. None of these maps shows any physical connection or tie-ins between the rental line and the Jennings-Pescadito line, and Neff testified from actual physical inspection made by him that there was no such physical connection, (R. II, 1280-1283). After the Company's build-up for this rate case, it evolved the elaborate map appearing at R. II, 1405, December 31st, 1931.

When the Company was asked by the City's accountant, Lewis, for information as to the location of the line on which these purported rentals were supposed to be charged, the Company was unable to give the information, (R. II, 1314-1315). Counsel for the Company, in questioning Mr. Lewis about the interview, asked:

"Q. Didn't you get the impression that we did not know?

A. I do not believe you did know.

Q. I don't believe so either." (R. II, 1314).

At some time between the date of the map of February 28, 1931, (R. I, 216-a) and of the second map of December 31st, 1931, (R. II, 1405), a physical connection was made between the two lines at Jennings Junction, denoted by a black square. This connection, however, is used only for transporting gas southward out of the Jennings field into the Jennings-Roma line, and the Company's expert, Greene, himself, did not know when the physical connection was made, (R. II, 1217).

XXVI-B, 5

(See p. 36, supra)

Management Fees: The top holding company all along has been charging large management fees to the operating companies, (R. II, 1390). At one time the contract provided that these management fees should be based upon a percentage of the gross revenues of the operating company; and the percentage was bracketed so that the greater the gross revenues, (not net revenues) of the operating company, the greater would be the percentage to be paid as management fees, (R. II, 1328). The Company offered no evidence whatever supporting its claim for these management fees before the Commission. The Commission disallowed them, (R. I, 24).

In the District Court trial Dickerson, Vice President and Director of Electric Bond & Share Company, and sponsor for the Texas area, outlined in general terms the services for which these management fees were claimed to be paid, (R. I, 191-195). Neither Dickerson nor any other witness undertook to give any detailed or supporting data showing the cost to the holding company of these claimed services, (R. I, 686-695). Dickerson only stated his general unsupported conclusion that the services cost Electric Bond & Share Company "substantially 85% of the amount due," (R. I, 195).

It is to be remembered that the record showed the closest-knit inter-company affiliation and control among all of the interested companies, (R. I, 191-195, 230, 553-554, 559, 602-606, 645-646, 659-661, 686-695; R. II, 873-874, 1079-1080, 1334-1335).

Dickerson testified that his own salary, (R. I, 700-701) had been $22,000, later reduced to $20,000, per year, plus expenses. He testified also that Groesbeck, President of Electric Bond & Share Company, got a salary of $77,000 per year and that other officials got salaries from $100,000 down to $65,000 per year, his information being gleaned from newspaper reports, (R. I, 688-689). He was asked to produce a list of salaries paid to officials and principal employees of the company, and promised to do so. Instead of complying with the promise, however, he returned to New York and several days later, Hargrove, Vice President in charge of production and transmission for United Gas and affiliated companies, (R. I, 359), was sent to the stand to substitute for Dickerson. Hargrove testified that they had not obtained the salary list, (R. II, 1059).

Under the holdings of this Court in the *Dayton Case* and in *Smith v. Illinois Bell Telephone Company*, 282 U. S. 133, 152-157, 75 L. Ed. 255, 265-268, and other cases cited in footnote 29, infra, p. 104, the Company failed to discharge the burden of showing the actual cost of these inter-company services to the affiliated holding company, and, therefore, no part of same are properly chargeable as operating expenses.

XXVI-B, 6

(See p. 36, supra)

Uncollectible Bills: The Company charged into operating expense a sizeable reserve for uncollectible bills ("loss on bad debts"), R. II, 1390, "questionable items."

The Company follows the custom of obtaining meter deposits of a minimum amount of $5.00 per meter for domestic consumers, and larger amounts for users of greater volumes; attempting, as its witness testified, to base these required deposits on the estimated bill for sixty days, (R. I, 607-608, R. II, 1330-1332).

Under the statutes of Texas,[27] the Company is authorized to require such deposits from all customers, as a condition precedent to service, as will protect it against loss from bad debts. *Central P. & L. Co. vs. Purvis*, 67 S. W. (2d) 1086, 1089. Furthermore, the record shows that for the 12 months ending July 31, 1932, it charged into this item the uncollectible bills accumulated as far back as 1929 and 1930, (R. II, 794-795). It also charged, for 1933, bad debts incurred on transmission line operations outside Laredo, which could not have been incurred in Laredo, (R. II, 792). And, inasmuch as the Commission had allowed "reasonable compensation" for bad debts, (R. I, 24) even Lewis included $1,940.75 for bad debts for the year 1933, (R. II, 792); and, to this extent operating expenses for 1933 are over-liberal even in Lewis' Exhibit 8 (R. I, 253); and, of course, this, as well as the items of improper operating expense

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[27]Article 1440, R. C. S. Texas (1925): "Deposits for installing service. Every . . . corporation . . . engaged in the furnishing of . . . gas . . . which requires the payment on the part of the user of such service of a deposit of money as a condition precedent to furnishing the same, shall pay six per cent interest per annum on such deposit to the one making same . . ."

for 1932 and 1933, entered into the Company's computation at p. 34 of its Brief. This is the computation where the Company said, "Nothing can be said by way of argument that will add anything to what these figures show."

In view of these facts, and the fact that the Company could have protected itself against uncollectible bills by securing proper deposits, it is our position that these items, under the facts shown in this record, are not properly chargeable to operating expense.

XXVI-B, 7

(See p. 36, supra)

Donations: A public utility must confine its expenditures to such as are legitimate for carrying on its business. It may not, as between itself and the public, take the same liberties as a corporation may assume as between itself and its stockholders. Even between the Company and its stockholders, donations, though calculated to advance the interest of a corporation, are not permissible in a rate case. *Idaho P. Co. vs. Thompson*, 19 Fed. (2d) 547, 588; *McCrory vs. Chambers*, 48 Ill. App. 445; *Holt vs. Winfield Bank*, 25 Fed. 812; *Davis vs. Old Colony R. Co.*, 131 Mass. 258, 41 Am. Rep. 221.

XXVI-B, 8)

(See p. 36, supra)

General Office General Expense, Prorated: The task confronting the Commission's accountant, Lewis, in arriving at the correct operating figures for the periods

considered by the Commission, (R. II, 1381-1393), and particularly the account designated by the Company as "General Office and General Expense Prorated," (R. II, 1124, 1390, R. I, 256), will be realized when the Company's exhibit of "Classification of Accounts", appearing at R. II, 1137-1201, is referred to.

It will be noted that Lewis, in his endeavor to ferret out the actual expense items incurred by the Company and charged to its account No. 113-38-2, "General Expense Account," met with a continuous series of insurmountable obstacles.

Although the top or starting figure of this account was requested by Lewis of Womack earlier during the District Court trial, (R. I, 567), ten days later this information had not been furnished, (R. II, 812), and it was never furnished during the entire proceeding.

The top figure which Lewis requested of Womack was the "starting figure of general expense charged on the office books, account 113-38-2," and Womack's adjustments to that total, and his allocations, from the top company at the apex of the pyramid down through the underlying companies, based upon such starting figure, (R. II, 812). A reference to the Company's exhibit of classification of accounts (R. II, 1196) will readily disclose the necessity of having the starting figure of said account in order to enable an accountant to determine the propriety of charges and credits thereto.

The further difficulties encountered by Lewis are illustrated by the fact that in his endeavors to properly

classify the several accounts in the Company's operating statements, he found that such accounts had been reclassified as often as four or five times a year (R. II, 1307); and that there was no uniformity in the method pursued in the Accounting Department, although the Company professed to follow the standard classification of accounts as prescribed by the American Gas Association and the Association of Railway and Utility Commissioners, (R. I, 67-68). He found that the practice would be, that during certain months the amount paid an employee would be charged to "customers expense", and the following month it would be charged to "merchandising and jobbing account", and that as a result it was extremely difficult for him to determine "just what their policy was", as they had made "so many changes in that connection," (R. II, 1323).

Not having received the information requested, as above shown, Lewis had no other alternative than to use, in his Exhibit 8, (R. I, 253-259, R. II, 1115-1127) the Company's own allocations of these items of General Office General Expense. He testified repeatedly that he was not satisfied with such allocations as being correct, but there was nothing he could do about it. (R. II, 793-794).[28]

Next to "Gas Purchases," this was the largest single item of operating expense in the years covered by the

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[28]Lewis' testimony, with reference to allocations of general expense items, and the necessity of his using the Company's percentages (R. II, 793-794) was deleted by the Company when it designated for printing its clipped excerpts, R. I, 271.

exhibits up through 1931, and for 1932 and 1933 it was the *largest* item. (R. I, 253, R. II, 1115).

This, therefore, is another substantial item of error entering into all of the Company's computations, particularly those appearing at pp. 34, 36, and 37 of its Brief.

These charges, reflecting allocations of expense between a multiplicity of affiliated companies in inter-company transactions, do not stand upon the same footing, and do not carry the same presumptions of regularity, necessity and reasonableness, as do items of expense incurred and paid directly (in fixed and unallocated amounts) to outside, disinterested parties; and the character of proof required to support such inter-company charges is therefore essentially different from, and more strict than, those so incurred and paid. The Company, however, proceeds on the assumption that all items actually appearing on its books, regardless of their origin or nature, are properly chargeable as operating expense in the computation of the rate structure, and are *prima facie* proof of their own propriety and reasonableness. This Court has never sanctioned such theory.[29]

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[29]Chicago & G. T. R. Co. vs. Wellman, 143 U. S. 339, 346, 36 L. Ed. 176, 180; Smith v. Illinois Bell Tel. Co., 282 U. S. 133, 152-157, 75 L. Ed. 255, 265-268; Acker vs. United States, 12 Fed. Suppl. 776, 779, affd. 298 U. S. 426, 80 L. Ed. 1257; Dayton P. & L. Co. vs. Pub. Ut. Com. of Ohio, 292 U. S. 290, 295, 78 L. Ed. 1267, 1273; Western Dist. Co. vs. Pub. Serv. Comm., 285 U. S. 119, 126-127, 76 L. Ed. 655, 659; United Fuel Gas Co. vs. R. R. Com. of Ky., 278 U. S. 300, 320, 73 L. Ed. 390, 401.

The Commission's operating statements included charges for "New Business Expense", (R.I, 253; R. II, 1115). On this item, again Lewis' exhibits are over-liberal to the Company, in that the record does not support the inclusion of such item. *West Ohio Gas Co. vs. Public Utility Comm.*, (Lima Case), 294 U. S. 62, concurring opinion of Mr. Justice Stone, pp. 77-78, 79 L. Ed. 761, 772-773.

XXVI-B, 9

(See p. 36, supra)

Wellhead Price of Gas Purchases: Before the Commission, the parties stipulated (R. I, 66) that 5c per MCF should be accepted as the price for gas at the wellhead, and on this basis no production properties were evaluated.

In the trial before the District Court, however, it developed that the Company was paying as little as 3c per MCF in the Martinez (Fansler) Field, a few miles south of Jennings Junction. All of this gas, however, was transported to Mexico, (R. I, 650). Womack, Company's accountant (R. I, 579), and Hargrove, Vice-President, in charge of production and transmission (R. I, 359), showed (R. II, 1103-1104) that the Company was purchasing extensively at 4c per MCF in the Laredo area. Mayor Martin also testified (R. II, 946) to a prevailing wellhead price of 4 cents in the Carolina-Texas area. Other testimony showed (R. II, 1101) an average prevailing price of 4.25c or 4.30c per MCF at the wells. Commission's accountant, Lewis, before the court, used a composite figure of 4.257c, (R. II, 802).

We have already pointed out that the Company, both before the Commission and court, attempted to load this price with the additional 1c per MCF gathering charge in favor of its affiliate Southern Gas Company in the Carolina-Texas field from whence the Laredo gas was being taken.

Before the District Court, the Company also attempted to load the actual wellhead price by adding thereto additional expense for geological and exploratory activities, R. I, 101-102, 360-361, 363; R. II, 1101-1102). Company witnesses were unable to give any supporting data to justify the addition of this item of expense, and were unable to say that any such expense had been incurred in connection with any of the leases from which the Company bought gas for Laredo, (R. I, 580-582).

Before the Commission, Lewis used the 5c wellhead price according to the stipulation, (R. I, 261); but in view of the Company's attempts to add to the actual wellhead price he used, in the Court, the actual cost at the well (R. II, 755-756, 843). See also Stein, R. I, 615-616; Womack, R. I, 554-556, 559, 560, 591-593, 599; Lewis, R. I, 261-262.

(See pp. 36-37, supra)

Lewis prepared a chart disclosing the gas sales and operating expenses of the Company over a period of years through 1932, (R. II, 1380-A). From this chart it will be seen that subsequent to the Company's peak year of 1930, during which period its gas sales declined steadily, transmission and distribution main-

tenance and operating expense declined proportionately; on the other hand, "General Expense" began a steady increase throughout the period; in fact, while production expense decreased 20.75%, transmission expense 19.32%, distribution expense 34.40%, utilization expense 76.68%, customer expense 12.04%, and even new business expense decreased 10.49%—General Expense *increased* 31.32%. (R. II, 763). In these circumstances such increased general expense should not be given any force in a case of claimed confiscation: *Reno P. L. & W. Co. vs. Comm.*, 298 Fed. 790, 801.

OPERATING EXPENSES IN GENERAL

Even Lewis' Exhibit L before the Commission, (R. II, 1381-1393), and his Exhibit 8 before the District Court, (R. I, 253-259, R. II, 1115-1127), include all of the above-mentioned improper or questionable items of operating expense, with the exception of pipe line rentals and 1c gathering charge in Carolina-Texas field, which he eliminated in his said exhibits.

In Exhibit L (R. II, 1390) before the Commission, although he included such questioned items (except gathering charge and pipe line rentals) in his operating statements, he set them apart as "questionable items," so that the Commission might handle them as it thought fit. Since the City and Commission had no accounting statement before the District Court for the entire calendar year 1932, (but had only that previously made before the Commission, up to July 31, 1932), the Commission has neither eliminated nor segregated in its exhibits before the District Court

the questionable items for the five-months' period, August 1-December 31, 1932.

In Lewis' exhibit before the District Court, he has, for the year 1933, eliminated, as above stated, the pipe line rentals and 1c gathering charge, and a portion of "General Office General Expense Prorated" for which he had sufficient data to justify elimination. As to the remaining "General Office General Expense Prorated," he was, as above stated, not at all satisfied, but had not sufficient data to justify elimination and hence had no alternative but to include it. Thus, if our position be correct as to any or all of these improper or questionable items of operating expense, even the operating statements prepared by Lewis, (R. II, 1381; R. I, 253), reflect to that extent too low net operating results.

XXVI-D, 5

(See p. 39, supra)

When the Commission hearings were held, in October and November, 1932, (R. I, 11), the record shows plainly that the Company had full knowledge that the so-called "non-recurring revenues" from industrial sales previously made to Central Power & Light Company and the Company's affiliate (R. I, 110) Motor Fuel Products Company had already long ago failed.

Motor Fuel Products Company's plant was shut down in the early part of 1931, (R. I, 110), and from that date forward the Company knew the sales to it were out of the picture. As to Central Power & Light Company, the record shows that the Company knew also "at the beginning of 1931" (R. I, 106) the sales

to it had begun to "show a decline in comparison to the amount . . . in the preceding years."

Company's witness Randall, who was in charge of its industrial sales at Laredo, knew, prior to the Commission's hearings, of the Central Power & Light Company's original plan to build a new plant in Laredo; and he knew also of its change of plan later to abandon regular generation of electricity at its Laredo plant and to build an inter-connected system to bring into Laredo electricity generated at its plants elsewhere—for he was negotiating with them for a continuation of their use of gas in the Laredo plant all the while, and knew the Company's refusal to lower its industrial price, and its arbitrary raise of the second bracket of industrial sales from 16c to 18c per MCF on January 1, 1929, was largely an instrumental factor in the electric utility's decision to generate its electricity elsewhere, (R. I, 548, 544-552). Local Manager Stein also knew of these circumstances, (R. I, 609-611).

The new inter-connected electric transmission line was completed and connected in 1931, (R. I, 106) and the Company knew from that time forward its big sales to Central Power & Light Company were at an end. Yet the Company, in the hearings before the Commission did not by oral testimony, exhibits or otherwise give the Commission the benefit of that information, or in any way put the Commission upon notice that the previous sales to these two customers had declined or failed or would not be enjoyed in the future.

For the first time in District Court, the Company plead (R. I, 37-38) that these sales would be "non-recurring"—attempting in the pleading, incidentally, to make it appear that the Company had not known of this "non-recurrence" until *after* July 31, 1932, which was the final accounting period presented before the Commission—and there, for the first time by its oral testimony and exhibits brought out the "non-recurrence" of these revenues.

In *Western Dist. Co. vs. Pub. Serv. Com. of Kans.*, and other cases, all cited at p. 40, supra, it has been held, by the lower courts and by this Court, that it is improper for a utility to withhold from the regulatory body material evidence of which it is aware, bearing upon the question of rates, and then for the first time adduce such evidence in the courts in support of an application for injunction against enforcement of the regulatory orders.

The rule of estoppel should be applied with especial strictness in a flagrant case of the kind here presented—for the inevitable result would be that a utility could and would defeat all attemps at regulation by the simple expedient of allowing the regulatory body to fall into error for lack of evidence and then set aside its order in court upon evidence never produced before the Commission.

CONCLUSION

In *Lindheimer vs. Ill. Bell Tel. Co.*, 290 U. S. 151, 175, 78 L. Ed. 1182, 1197, this Court said:

> "It is not the function of the court to attempt to construct out of this voluminous record inde-

pendent calculations to invalidate the challenged rates. It is enough that the rates have been established by competent authority and that their invalidity has not been satisfactorily proved."

Likewise, we find it instinct in all the decided cases that no burden rests upon the Commission to attempt to make computations which will uphold the rate, but that the burden rests upon the Company to prove confiscation by evidence so clear and convincing as to leave no doubt in the minds of this Court.

As we conceive it, our duty is fully discharged when we point out, as we have attempted to do, the principal fallacies in the Company's evidence and show that these have produced error in the results arrived at in the Company's computations. We do not understand that it is our duty—nor, under this record, would it be possible—to measure exactly in dollars the extent of the errors injected by the Company into its computations and estimates. See footnote 24, p. 91, supra.

If this Court is of the mind to attempt to construct its own computations out of this record, and make due allowance for all of the patent errors in the Company's methods of approach, we certainly shall not object to its so doing; for we are confident that if the necessary adjustments and allowances be made, it will be seen that the Commission has been overliberal in its allowances in every element, ultimate and subsidiary, entering into the computation of the rate structure; and that if a corrected average be computed over a reasonable spread of years—any years the Court may choose out of those reflected by the operating statements in evidence—it will be seen that the 55c rate

will, on the average over 1932 and 1933 and for the future, earn a rate of return very substantially above the line of confiscation.

Even the Company, at p. 23 of its Brief, has abandoned Paragraph 4 of its Assignment of Errors (R. I, 511), in which it was originally urged that the 3% per annum allowed by the Commission for future depreciation reserve accruals was too low.

At p. 68 of its Brief the Company states that it applied to the City for an increase in its rates *prior* to January 1, 1932, the effective date of the order. This is directly contrary to, and is in the teeth of the indisputable fact, shown by the record, (R. I, 10; R. II, 1351-1352-A, 1353-1355), that it did not ask for the increase until *June* 27, 1932—nearly six months after the effective date of the ordinance, and more than seventeen months after it was alleged (R. I, 40) the 75c rate had become confiscatory in "*February*, 1931."

At pp. 61-62 of its Brief, the Company says that the Commission did not submit any operating statement for the calendar year 1932, and (Brief, pp. 37, 34) that its own operating statement for that calendar year stands "undisputed." The Court knows that it is utterly foolish to say the computations for 1932 are "undisputed", but we wish to point out why the Commission made no operating statement for the calendar year 1932: The parties agreed upon the final accounting period before the Commission to be the twelve months ending July 31, 1932, that being agreed as the latest date the accounting records could be brought down before the hearing. Before the court,

the Commission had been able to complete its audit of the Company's records for the calendar year 1933 only, (R. I, 287, 233).

At p. 15 of its Brief, the Company mentions Federal Income Taxes. The only evidence as to income tax in the entire record appears at R. II, 886, where Lewis, on being questioned whether the Company paid any income tax for 1932 or 1933, stated that he had not seen the Company's consolidated tax return, but that the earnings of the South Texas Gas Company, particularly, would indicate that it was never subject to any income tax. The reason for this fact is not shown in the record. It may have been due to a number of factors not pertinent to earnings or to the rate structure—such as the filing of consolidated returns with its affiliated and parent companies, interest paid on borrowings, credits at 5% per annum taken for depreciation in income tax returns, etc.

The principal features of the picture the Company has attempted to paint for the courts are these: A claimed fair value rate base of $1,225,000.00; a required net annual return of 10% of that base; plus claimed future annual requirements for depreciation of 5%, 6% and 10%; annual operating expenses of $125,001.40 for 1932 and $119,821.04 for 1933; and net revenues for the entire future stripped down to the level of the depression year 1932 and the abnormally warm depression year 1933; each year standing upon its own bottom, independently of all calculations over a spread of years; so that in order to earn a return of 4.57% of its claimed fair value rate base (R. II, 1352) it claims it must charge $1.50 per MCF for

gas—which means that it would have to charge approximately $3.30 per MCF in order to earn the 10% net return it claimed to be necessary. In addition, it claims it is and will be perpetually haunted by the spectre of exhausted reserves.

But into the picture the Company has permitted many flaws and imperfections to appear, only the most serious of which we have attempted to point out in this Brief.

Over against its claim that it cannot obtain a market for sufficient volumes of gas in and about Laredo to enable it to sell at a cheaper price, is its inconsistent claim that it is always harried and hard put to obtain sufficient reserves to supply Laredo.

And against this claimed shortage of gas is the fact, to which one cannot close his eyes, that it has followed the not unknown practice of holding up through monopoly the domestic price to the highest point the traffic will bear, and "dumping" the surplus into Mexico and elsewhere for anything that can be obtained for it. And also, the strange paradox that the City of Laredo is sitting virtually on top of inexhaustible reserves of gas, in an area whence numerous large high-pressure lines are transporting gas away in enormous quantities to many distant points, and yet having to pay more for gas taken from the ground at its very front gate than is paid for the same gas after being transported long distances; such as Monterrey, Mexico; Houston, San Antonio, Austin, San Marcos, New Braunfels, and numerous Rio Grande Valley points.

It has not tried out the reduced rate, but on the contrary has defied the public rate-making authorities and chosen to "go into court" upon the ground of confiscation.

This Court, in upholding a rate, has used some very apposite language in *Knoxville vs. Knoxville Water Co.*, 212 U. S. 1, 17, 18; 53 L. Ed. 371, 381-382, as follows:

> P. 16: "The jurisdiction which is invoked here ought, as has been said, to be exercised only in the clearest cases. If a company of this kind chooses to decline to observe an ordinance of this nature, and prefers rather to go into court with the claim that the ordinance is unconstitutional, it must be prepared to show to the satisfaction of the court that the ordinance would necessarily be so confiscatory in its effect as to violate the Constitution of the United States . . .
>
> Pp. 17-18: "Where the case rests, as it does here, not upon observation of the actual operation under the ordinance, but upon speculations as to its effect, based upon the operations of a prior fiscal year, we will not guess whether the substantial return certain to be earned would lack something of the return which would save the effect of the ordinance from confiscation. It is enough that the whole case leaves us in grave doubt. The valuation of the property was an estimate and is greatly disputed. The expense account was not agreed upon. The ordinance had not actually been put into operation; the inferences were based upon the operations of the preceding year; and the conclusion of the court below rested upon that most unsatisfactory evidence, the testimony of expert witnesses employed by the parties."

This litigation has been a protracted and an expensive one, and should be terminated. We respectfully submit that the judgment of the Court of Civil Appeals and of the Supreme Court of Texas should be affirmed.

Respectfully submitted,

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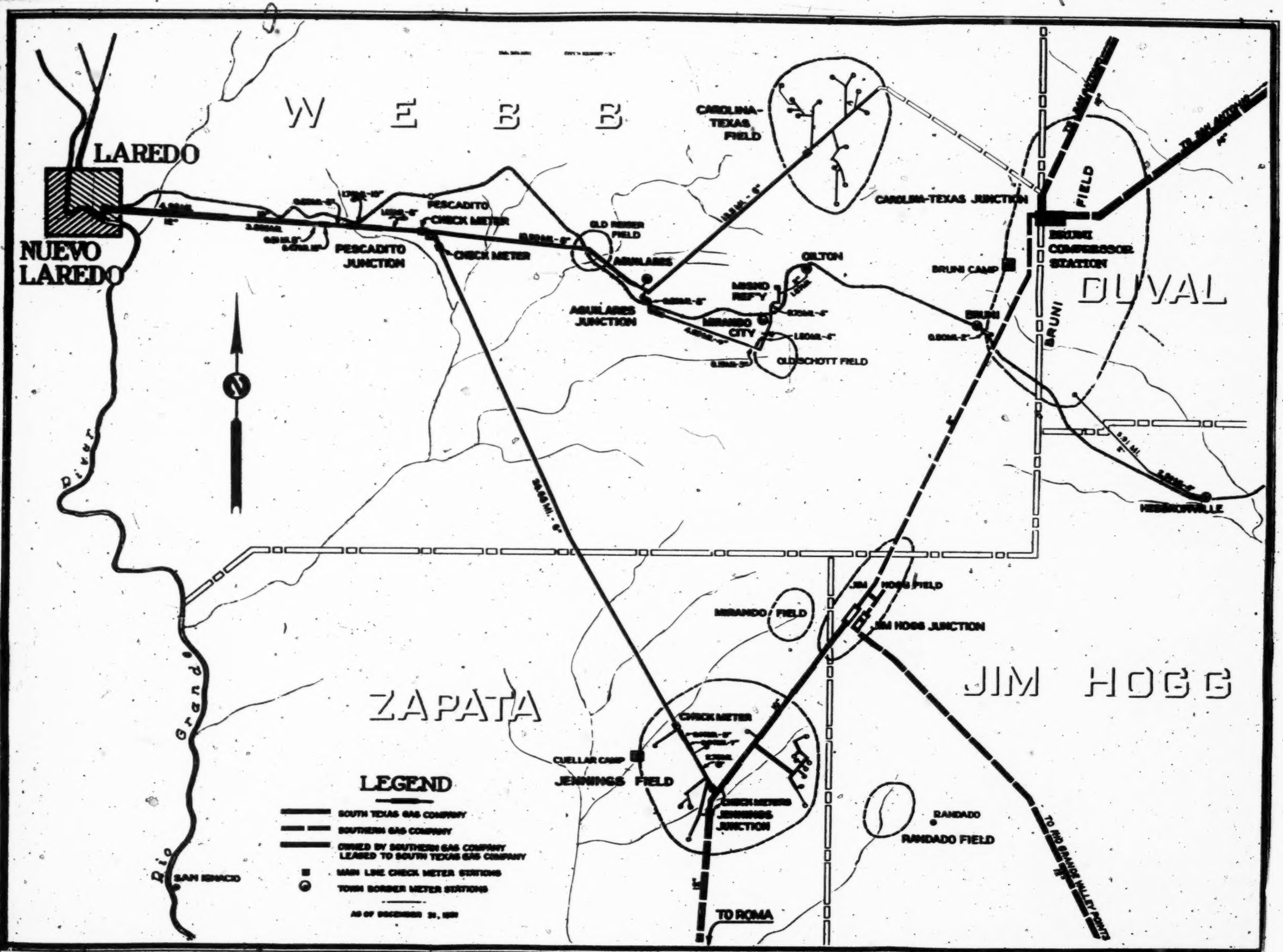
Attorney General of Texas

ALFRED M. SCOTT,
Assistant Attorney General
of Texas

EDWARD H. LANGE,
City Attorney,
City of Laredo

Attorneys for Appellees


WEBB
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AGUILARES
AGUILARES JUNCTION
CAROLINA-TEXAS FIELD
CAROLINA-TEXAS JUNCTION
MIRANDO REF'Y
MIRANDO CITY
GILTON
OLD SCHOTT FIELD
BRUNI CAMP
BRUNI
BRUNI COMPRESSOR STATION
BRUNI FIELD
DUVAL
HEBBRONVILLE
ZAPATA
JIM HOGG
MIRANDO FIELD
JIM HOGG JUNCTION
CUELLAR CAMP
JENNINGS FIELD
CHECK METER
JENNINGS JUNCTION
RANCHITO
RANCHITO FIELD
TO RIO GRANDE VALLEY POINTS
TO ROMA
LEGEND
SOUTH TEXAS GAS COMPANY
SOUTHERN GAS COMPANY
OWNED BY SOUTHERN GAS COMPANY LEASED TO SOUTH TEXAS GAS COMPANY
MAIN LINE CHECK METER STATIONS
TOWN BORDER METER STATIONS
AS OF DECEMBER 31, 1951

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 13

UNITED GAS PUBLIC SERVICE COMPANY, *Appellant*,

v.

THE STATE OF TEXAS, ET AL, *Appellees*.

Appeal from the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin.

APPELLEES' SUPPLEMENTAL BRIEF.

V. (See pp. 18, 44-47, Appellees' Original Brief).
VI. (See pp. 19, 44-47, Appellees' Original Brief).
VII. (See pp. 19-20, 44-47, Appellees' Original Brief).

Appellant argues that the Court of Civil Appeals has denied it the independent judicial review, as to the facts, claimed by it to be required by due process; and that such Court has placed upon the Company an impossible burden, ignored and refused to consider its evidence, foreclosed its mind against the Company in advance, and accepted unquestioningly all evidence of Appellees. As evidence of

these claims Appellant cites the opinion of the Court of Civil Appeals.

We also invite this Court's most careful scrutiny of that opinion. (R. I, 410-428, 89 S. W. (2d) 1094). We ask the Court especially to note how often, in the opinion, the Court of Civil Appeals specifically adverts to, discusses, analyzes and reviews, Appellant's evidence and contentions. R. I, 414, 415, 416, 417, 420, 421, 422, 423, 425.

That the Court of Civil Appeals did exercise its independent judicial judgment as to the facts in this case is also perfectly clear from the circumstance that the Court (R. I, 423-424) cited its own previous discussion and holding, as to the scope of judicial review, in *State of Texas* v. *Lone Star Gas Company*, 86 S. W. (2d) 494, 498-500; where it specifically pointed out and discussed at length the clear distinction between the type of judicial review required in the case of orders not involving claimed confiscation and those involving such question; and where it is expressly held that in the case of claimed confiscation the court is required, in view of the *Ben Avon Borough case* and others, to accord the complaining party a *de novo* or independent judicial review as to the facts as well as the law. This it then proceeded to do in the present case.

XXVI-A, "Rate Base In General": (See pp. 87-92, Appellees' Original Brief):

Appellant also points out that the Court of Civil Appeals adopted, as the rate base in some of its computations, the sum of $700,000 instead of the $885,000 fair value found by the Commission; and from this circumstance alone the Company jumps to the conclusion—absolutely unwarranted by anything appearing either in the court's opinion or in the entire record—that this $700,000 represents, in round numbers, the depreciated reproduction cost new estimate of $698,047 of the Commission's witness Elrod (R. I, 330) as of December 31, 1933, before the District Court, which excluded the Pescadito-Jennings transmission line and the west Jennings gathering system.

We point out that it is perfectly plain that what the Court of Civil Appeals was referring to was, not the reproduction cost new estimate of Elrod, but the statement as to historical cost in the Commission's opinion. At R. I, 15, the Commission said:

> "In addition, the City adduced evidence showing the depreciated historical cost of the properties as of July 31, 1932, to be $709,991.23."

This amount, of course, was approximated by the Commission from a study of the City's historical cost exhibit (R. II, 1374-A) covering the whole of the properties in the Laredo area.

The Court of Civil Appeals simply said (R. I, 414-415):

> "There was also evidence *before both the trial court and the Commission,* which tended to show the fair value of appellant's property to be about $700,000 . . . "

and nothing whatever is said to indicate that it based this figure upon Elrod's estimate. On the contrary, the conclusion is inescapable that it referred to the Commission's historical cost estimate aforesaid; for the Court could not have been referring to Elrod's reproduction cost new estimate of $698,047—that estimate was not before the Commission at all. The lowest reproduction cost new estimate before the Commission was Elrod's figure of $810,698 (R. I, 15, 208). The historical cost exhibit (R. II, 1374-A) was before both the Commission and District Court, and therefore satisfied the essential requirements of the above-quoted language of the Court of Civil Appeals; and, of course, the Commission's above-quoted estimate of $709,991.23 as historical cost was likewise before the reviewing court.

XXVI-D, 5. (See pp. 39-40, 108-110, Appellees' Original Brief):

On the estoppel of the Company to urge the claimed loss of the "non-recurring" revenues from Central Power &

Light Co., and Motor Fuel Products Company, because of its failure to point out in any manner, before the Commission, the claimed permanent loss of these accounts, although such claimed losses were shown plainly to have been well known to the Company long before the Commission's hearings began:

The Company claims (see its Supplemental Brief, p. 11) that the Commission could and should have known of the claimed permanent loss of these two accounts, because the total decline in revenues, shown in Exhibit L (R. I, 218) was plainly apparent to anyone examining it. It is true that such exhibit, and the testimony generally, before the Commission, did show a decline in total revenues over the four-year operating period presented by the City before the Commission. But there was nothing, in the face of the said exhibit itself or in the Commission record otherwise, to put the Commission upon notice, (or even upon suspicion), that the decline in total revenues was in whole or in substantial part due to any claimed permanent loss of these two particular large industrial accounts or any other accounts; and in the condition of the record the Commission would naturally have supposed that the decline was due simply to a general falling off of business during the depression and was therefore only temporary.

On the distinction between introducing before the reviewing court evidence which has newly developed, or been newly discovered, since the close of the Commission record, on the one hand, and evidence which, on the other hand, was known to the complaining party prior to the Commission hearing, and not introduced by it at such hearing but deliberately withheld and introduced by it for the first time in the reviewing court, see *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38, 54, 80 L. Ed. 1033. And on the impropriety of such conduct generally, see also concurring opinion of Justices Brandeis, Stone, Roberts and Cardozo, in *B. & O. R. Co.* v. *United States,* 298 U. S. 349, 392, 80 L. Ed. 1209.

XIX. (See pp. 28, 63-66, Appellees' Original Brief):

Upon the question of refunds allegedly infringing the due process clause:

See *Central Kentucky Co.* v. *Commission*, 290 U. S. 264, 275, 78 L. Ed. 307, where this Court, on reversing because of the lower court's unauthorized attempt to fix a new rate, ordered accumulated refunds to be held in custody of an agent of the Commission, for disposition by it on the ordered rehearing, for a period of several years. This shows plainly that there is nothing about impounding and ordering of past refunds which is incompatible with due process.

XXVI-B, 8. (See pp. 36, 101-105, Appellees' Original Brief):

Please add to footnote 29, page 104, of our original brief, the case of *Lindheimer* v. *Ill. Bell Tel. Co.*, 292 U. S. 151, 169, 78 L. Ed. 1182, 1194.

XXVI-B, "Operating Expenses in General": (See pp. 107-108, Appellees' Original Brief):

As pointed out by this Court in *Lindheimer* v. *Ill. Bell Tel. Co.*, 292 U. S. 151, 164, 78 L. Ed. 1182, 1191, the items of questioned operating expense are especially important, because, dollar for dollar, they exercise a much greater effect upon the rate structure than do property items entering into the rate base.

Respectfully submitted,

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Attorney General of Texas,

ALFRED M. SCOTT,
Assistant Attorney General of Texas,

EDWARD H. LANGE,
City Attorney, City of Laredo,
Attorneys for Appellees.

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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 13.

UNITED GAS PUBLIC SERVICE COMPANY, *Appellant*,

v.

STATE OF TEXAS, ET AL.

Appeal From the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

PETITION OF APPELLANT FOR REHEARING.

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 13.

UNITED GAS PUBLIC SERVICE COMPANY, *Appellant*,

v.

STATE OF TEXAS, ET AL.

Appeal From the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

PETITION OF APPELLANT FOR REHEARING.

Pursuant to Rule 33 of this Honorable Court, United Gas Public Service Company, appellant herein, presents this, its petition for a rehearing of this cause, limited to that portion of the Court's opinion and judgment affirming the judgment of the State court sustaining the validity of that portion of the Commission's order which made its rate retroactive to January 1, 1932. In support thereof appellant respectfully shows:

I.

Validity of Retroactive Provision.

The Commission's order fixing the 55 cent rate was dated June 13, 1933, but was made retroactive to January 1, 1932 (R. 26). The trial court held the retroactive provision in-

valid, but did not state the ground for the holding (R. 391). The State appellate court upheld the provision and reformed the judgment below so as to enforce it (R. 428), and error in this respect was duly assigned in this Court (R. 512). In the order requiring reargument here, there was noted the Court's desire to hear the parties as to the effect on appellant's rights, with respect to the calendar years 1932 and 1933, of the bond given by appellant on its appeal to the Commission from the City's ordinance. Preliminary Print, 302 U. S. vi. In the opinion of February 14, 1938, it was said:

> "Third.—With respect to the question of the validity of that part of the Commission's order which made its rate retroactive to January 1, 1932, considered in the light of the evidence relating to the intervening period and of the bond given on the appeal to the Commission from the City's ordinance, this Court is equally divided and the judgment of the Court of Civil Appeals in that relation is accordingly affirmed."

The Question as to the Bond is of Public Importance.

The amount of money controlled by the validity of the retroactive provision is substantial, though not large when compared with the total financial consequences to appellant of the Court's judgment. But the legal effect of a bond in the form given the Commission here is vitally important, not only to appellant, but to all public utilities and other businesses and their shareholders taking appeals to administrative boards or commissions in which bonds of similar import may be required.

Appellant furnishes natural gas in 115 cities and towns in Texas (R. 346), which is primarily significant, not on account of the scope of the operations, but because a property of this character provides the only feasible means by which the benefits of natural gas, which is produced only in localized areas, can be broadly distributed. Each such incorporated municipality, acting separately and indepen-

dently of all other municipalities or State agencies, has the power to fix by ordinance, and without either notice or hearing, the gas rates to be charged within its corporate boundaries.[1] Whenever rates fixed by such an ordinance are thought by appellant to be confiscatory, it has only one remedy, *which is an appeal to the Railroad Commission of Texas.*[2] Such appeal can be taken only by filing with the Commission "on such terms and conditions as the Commission may direct, a petition and bond to review the . . . ordinance . . . " Art. 6058.

The bond in issue here is the same in its terms and conditions as the Commission has required on every gas rate appeal since 1931. Cf. *Harris* v. *Municipal Gas Co.,* (1933), not officially reported, 59 S. W. (2d) 355. If the bond tendered is not on the Commission's prescribed form and in an amount fixed or concurred in by a majority of the Commissioners, that body will not take the appeal and supersede the rate reduction ordinance.

Allowance of the appeal and suspension of the ordinance enable the Commission to retain jurisdiction and forestall court action until entry of its final order. See *Harris* v. *Municipal Gas Co., supra;* cf. *Oklahoma Natural Gas Co.* v. *Russell,* 261 U. S. 290. While Article 6058 provides that the Commission shall determine "any such appeal within sixty days after the filing," this is not done, as the Commission, following the opinion of the State Attorney General, construes this provision as merely directory.[3] This appeal was before the Commission over ten months before the hearing ended, and the Commission did not enter its order till seven months after the hearing was closed (R. 9,

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[1] Article 1119, R. C. S. of Tex., 1925, as amended by Acts, 45th Texas Legislature, H. B. No. 131, sec. 1.

[2] Art. 6058 R. C. S. of Tex., 1925, quoted in footnote 1 of the Court's opinion entered February 14, 1938.

[3] The delay is not solely due to the Commission. Often it is the gas company, and more often the municipality, which is not ready to complete its testimony so as to allow determination in sixty days.

26). Thus suspension of the ordinance is essential to prevent imposition of a confiscatory rate for a considerable period of time.

The third portion of the Court's opinion has raised a grave doubt as to the effect of all such bonds which will continue until this Court definitely settles the question. This state of uncertainty will not be confined to Texas, where the Commission's standard form bond is conditioned as the bond here, as follows:

> "The condition of this obligation is, that the said principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said City any excess of rates or charges collected by the principal, Texas Border Gas Company, over and above the rates and charges that shall be finally determined to be a fair and reasonable return upon the value of its property used and useful in supplying natural gas and natural gas service to the City of Laredo, Texas; otherwise, this obligation shall be null, void and of no further force or effect." (R. 59-60)

In Ohio, the condition of the bond executed by the Ohio Bell Telephone Company was:

> "Now, Therefore, if the said utility shall well and truly repay to each and every consumer, at such times and in such amounts as *the Commission shall order*, such portion of the increased rate . . . collected by said utility *as the Commission, on final hearing, may determine* to have been unreasonable or excessive, then this obligation shall be void, otherwise to remain in full force and effect."

See volume I, p. 66 of the printed record in *Ohio Bell Tel. Co.* v. *Pub. Util. Comm. of Ohio,* No. 539, October Term, 1936, wherein the Commission's order was set aside without mentioning the bond. 301 U. S. 292. The Ohio bond, providing for repayment, at such times and in such amounts as the *Commission* shall order, of such portion of collections as the *Commission* shall find excessive or unreason-

able, is obviously much more onerous and contractual in form than the Texas bond as to which the Court has left this question in doubt.

As the matter now stands, appellant cannot know what to do and still be secure in its right to avoid confiscatory rates during pendency of an appeal to the Commission. It might tender the Commission a bond in which the right to contest any confiscatory rate ordered as a result of the appeal was spelled out in more elaborate detail, and still not be secure. For appellant has believed the obligation to refund only the portion of collections "over and above the rates and charges *finally determined* to be (yield) a fair and reasonable return" (R. 59-60)[4] was a clear reservation of the unrestricted right to challenge the order on every available ground, and that the obligation to refund only on *final determination* would be construed in the light of the State and Federal statutes providing for judicial inquiry into the validity of a proposed rate order, and for *successive appeals from such judgment.* If this Court should hold that the evidence showing the application of the order from January 1, 1932 to the date of the order or trial proved the order confiscatory for such period, no rational person could assert that the 55 cent rate had been "finally determined" to yield "a reasonable return" on property value during that period.

If, in the future, the Commission should refuse to take an appeal without execution of the present bond, appellant would be compelled to obey the ordinance or test the Commission's demand for such a bond by injunction or mandamus. In any such suit, appellant would have to rely solely on the Third Portion of the Court's opinion, which, being by an equally divided Court, is inherently inconclusive. Appellees have cited no cases in support of their

[4] Word in parenthesis ours. Counsel recalls that the more recent bonds substitute "yield" for "be," the only purpose of the change being to make the language more apt, not to change the meaning.

position as to the effect of this bond, and appellant has found none.

Appellant respectfully submits that the Third Portion of the Court's opinion and judgment is erroneous, because:

1. A *valid* consent by appellant to surrender its constitutional right to just compensation cannot be exacted by the Commission as the price for suspension and review of a rate ordinance claimed to be confiscatory. Cf. *United States* v. *Chicago, Milwaukee, etc., R. Co.*, 282 U. S. 311, 328-329. This record shows that the ordinance fixing the 40 cent rate, for suspension or review of which said consent is claimed to have been given, was set aside by the Commission as unjust and unreasonable (R. 427), and hence the alleged consent was the price for entertaining a *justified* appeal from an *invalid* ordinance.

2. As a condition for performing its statutory duty to review an ordinance and for the exercise of its discretion as to suspension thereof, the Commission cannot compel appellant to relinquish all or any part of its right to an *adequate judicial review* of the Commission's action. *Chicago, Milwaukee & St. Paul Ry. Co.* v. *Minnesota*, 134 U. S. 418, 459-460; *Chesapeake & Ohio Ry. Co.* v. *Conley*, 230 U. S. 513, 521-522. The Railroad Commission has the abstract power to make any rate it fixes effective as of the time appeal to it was taken (R. 427-428). Any order which, in respect to the period extending from the time of filing to the time of deciding the appeal, would leave appellant less than just compensation for the use of its property during said period, would be repugnant to the Constitution.[5] *Baltimore & Ohio R. Co.* v. *United States*, 298 U. S. 349,

[5] Proof of experience brought forward from the time of closing the Commission record as nearly as possible to the time of trial is deemed particularly persuasive in a confiscation case. *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 15. To require such proof, but to permit an administrative body to exact from those compelled to invoke its action an agreement not to claim the rights established thereby, would seem incongruous.

373. Both the alleged condition and consent were unconstitutional.

3. The alleged consent, being in derogation of constitutional rights, will not be found unless it *unmistakably* appears. The bond itself is not in evidence, appearing in the record only in the bill of exception to its exclusion (R. 59-60). Hence there was no occasion at the trial for evidence as to whether the bond was voluntarily executed or exacted by coercion. Every inference is against appellant's voluntary and intentional surrender of any right to attack the Commission's order. The Court judicially knows it to be contrary to human nature for men to willingly undertake use of their property for less than a reasonable return. *Dayton Power & Light Co.* v. *Pub. Util. Comm. of Ohio*, 292 U. S. 290, 311-312. There is no proof that the Commission's review or suspension of an ordinance is so valuable a right as to justify that sacrifice. When the Commission will not do its duty, the courts are open.

4. The Commission has statutory power to make its rate effective and order refunds from the time of filing the appeal (R. 427-428). In these respects, the bond adds nothing to power the Commission already possesses. The only purpose of the bond is to more adequately secure the payment of refunds. A contrary conclusion attributes to the Commission an intent to make an exaction which the Constitution forbids.

5. At the most, the bond is ambiguous, requiring evidence of the surrounding circumstances to explain the intent. Such evidence was not introduced at the trial, because the *bond* was not in *evidence* to explain. Certainly the petition tendering the bond and the order of suspension would be a substantial aid to proper construction. Any ambiguity in a document not in evidence, wholly disassociated from its related documents, would prevent that document from being taken as a definition of constitutional rights.

Confiscatory Operation of the Retroactive Provision.

To avoid repetition, appellant makes reference to pp. 47-50 of its main brief and pp. 15, *et seq.* of its supplemental brief on reargument, noting respectfully its urgent need for definite determination as to whether the testimony on which appellees attempt to support elimination of all general expense for 1933 rises to the dignity of evidence, as the claim information was withheld is now conclusively refuted, and such testimony limited to that of appellees' accounting witness who, after availing himself of the free run of appellant's books for nine months, said his time was too short and the general expense accounts too voluminous for him to audit each item (R. 724-725; 793-794).

II.

Request for Amendment of Opinion.

On pages 13 and 14 of its opinion, the Court, speaking from the printed record, says that appellant submitted and requested only certain special issues that did not embrace all the questions the jury should consider, and that appellant failed to request amplified instructions which might have aided the jury. These passages are quoted in footnote 6 below. Since the original record, which shows all the issues

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[6] From the Court's opinion of February 14, 1938:

p. 13.

"It will be observed that these special issues did not embrace all the questions which the jury should consider, as for example, the question of operating revenues, operating expenses and return."

p. 14.

"Appellant, while objecting to the charge on grounds which are not impressive, did not submit and request amplified instructions which might have aided the jury's consideration. Appellant was apparently content to object to the pertinent instructions that were given, and to a general charge, and to stand on its limited requests as to special issues.

Upon such a record we are unable to hold that there was a denial of federal right so far as procedural due process is concerned."

requested by appellant, is on file in this Court, since these passages might innocently lead those relying on the opinion into error and might suggest that appellant's counsel prejudiced the client's rights in the trial court, appellant respectfully requests amendment of the opinion to conform to the facts as shown by the original record, and in support thereof, shows:

The trial court's charge, when submitted to counsel, had features both of a general charge and a submission on special issues (R. 380-382), these being mutually exclusive methods under the State law.[7] Appellant used the only means available to it to make the record show which method the court had elected,[8] and the court ruled that "the charge submitted is on Special issue." See Order on page 372 of the printed record. In reliance on this ruling, appellant submitted and requested and court refused the special issues summarized in footnote 9 below. The State forbids sub-

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[7] Appellant's main brief, pp. 84-85, Articles 2185, 2189 and 2202.

[8] Absent request by either party, the trial court may elect either form of submission. A party has only one election, *i. e.*, a request for submission on special issues. See Art. 2189, quoted appellant's main brief, p. 85, and appellant's motion (R. 372).

[9] The issues are shown in the Transcript of the original record in the State court, pp. 116-202, numbered as set out below. The jury was instructed in each instance not to answer a later issue of the series if it had answered a prior issue with which there might be conflict. A summary of the requested issues is:

1. Was the fair value of the property used and useful to serve Laredo $1,225,000 in 1932 (Tr. 116).
2. Was said value $1,225,000 in 1933 (Tr. 118).
3. Was said value $885,000 in 1932 (Tr. 120).
4. Was said value $885,000 in 1933 (Tr. 122).
5. Did the figure $885,000 include allowance for materials and supplies, working capital and general overheads (Tr. 124).
6. 7. 8. Same questions as No. 5 above (Tr. 126, 128, 130).
9. Definition of used and useful property (Tr. 132).
10. What was the fair value of the used and useful physical operating properties in 1933 (Tr. 134, R. 373).

11. What was the fair value of the Jennings-Pescadito transmission line in 1933 (Tr. 136).

12. What was the fair value of the used and useful physical operating properties in 1932 (Tr. 138, R. 374).

13. What was the fair value of the Jennings-Pescadito transmission line in 1932 (Tr. 140).

14. What was the amount of materials and supplies, stated in dollars, required for the service of Laredo during 1933 (Tr. 142, R. 374).

15. 16. Definition of working capital. What cash working capital was required in 1932; in 1933 (Tr. 144, 146, R. 375, 376).

17. 18. Definition of going value. What was the going value inhering in the properties and business in 1932; in 1933 (Tr. 148, 150, R. 376, 377).

19. What was the overall average cost of the gas purchased at well-head by company from independent well-owners for use in Laredo during 1933 (Tr. 152, R. 377).

20. 21. 22. Is the proper annual depreciation allowance 5 per cent for the distribution properties, 6 per cent for the transmission properties, and 10 per cent for gathering properties serving Laredo (Tr. 154, 156, 158).

23. Definition of annual depreciation rate or reserve accrual (Tr. 160).

24. Is 3 per cent of $885,000 the fair depreciation allowance for the gas properties serving Laredo (Tr. 162, R. 378).

25. 26. 27. What amount, stated as a per cent of the reproduction cost of depreciable items, is a fair depreciation allowance therefor, and what is such cost (Tr. 164, 166, 168, R. 378).

28. 29. Same questions as to depreciation allowance and base for transmission properties (Tr. 170, 172, R. 379).

30. 31. Same questions as to depreciation allowance and base for gathering properties (Tr. 174, 176, R. 379).

32. 33. What was a reasonable rate of net annual return to company from Laredo operations in 1932; in 1933 (Tr. 178, 180).

34. 35. What per cent of fair property value would have been a reasonable return for Laredo operations in 1932; in 1933 (Tr. 182, 184).

36. What was the proper basis for apportioning joint transmission operations and maintenance expense between the Jennings-Roma and the Laredo transmission lines (Tr. 186).

37-44. During 1933, what was the cost of operating the properties serving Laredo for transmission operations (Tr. 188), transmission maintenance (Tr. 190), distribution operations (Tr. 192), distribution maintenance (Tr. 194), customers' expense (Tr. 196), new business expense (Tr. 198), law expense (Tr. 200) and necessary donations (Tr. 202).

mission of questions of law in a charge on special issues,[10] and the Supreme Court of Texas holds that the reasonableness of an act legislative in character is a *question of law*, and when determination of that question depends on the facts and arises in a jury trial, only the *facts* are to be resolved by the jury. *Houston & Texas Central Ry. Co.* v. *Dallas* (1905) 98 Tex. 396, 417; *Missouri, Kansas & Texas Ry. Co.* v. *Improvement District* (1927) 117 Tex. 34, 50.

The theory of the case on which appellant diminished the record for printing was that this Court would give to the jury's verdict the *character* attributed to it by decisions of the highest Court of the State, *i. e.*, a petit jury's answer to a question of law, or else, if the Court found that the evidence was sufficient to require resolution of the conflicting testimony on the facts conditioning the constitutionality of the Commission's order, the Court would note on the face of the record that whether the issues of fact had actually been determined in the trial court was raised,[11] but neither decided by nor necessary to the final judgment[12] from which the appeal here was taken, requiring the case to be sent back for decision of that question. Hence the printed record was made to include only enough of the special issues requested to show that appellant had sought, and had not waived, determination of the alleged inadequacy of the rate base and depreciation allowance on which the Commission estimated the 55 cent rate. Finally, appellant submits that the passages in question, written from the viewpoint of the procedure a State has power to provide, suggest omissions

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[10] See Article 2185, quoted appellant's main brief, p. 85, providing for submission only of "controverted questions of fact."

[11] Assignment 14 in the Court of Civil Appeals (R. 407).

[12] See the opinion of the Court of Civil Appeals (R. 414). Denial of writ of error by the Supreme Court of Texas signified that further review was refused because the judgment of the Court of Civil Appeals was deemed correct both in result and the rules of law applied. Article 1728, quoted on pp. 43-44 of appellees motion to dismiss this appeal.

on the part of counsel in respect to acts which, under the particular procedure, were not permissible, and therefore may reflect on counsel unfairly. See *McFaddin v. Hebert* (1929) 118 Tex. 314, 322-323.

CONCLUSION.

It is respectfully urged that the correction in the Court's opinion above referred to should be made; that a rehearing should be granted, limited to the point denominated "Third" on page 17 of the Court's opinion, and that upon such rehearing the judgment of the Court of Civil Appeals upholding the retroactive provision of the Commission's order should be reversed.

JOHN P. BULLINGTON,
F. G. COATES,
Counsel for Appellant.

CERTIFICATE OF COUNSEL.

I, F. G. Coates, counsel for appellant United Gas Public Service Company in the above cause, do hereby certify that the foregoing petition for a rehearing thereof is presented in good faith and not for delay.

F. G. COATES,
Counsel for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

NO. 13

UNITED GAS PUBLIC SERVICE COMPANY,
Appellant

Versus

THE STATE OF TEXAS, ET AL,
Appellees

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

REPLY TO APPELLANT'S PETITION FOR REHEARING

By confining its Petition for Rehearing to that portion of this Court's judgment upholding the judgment of the highest state courts requiring refunds from and after January 1, 1932, Appellant impliedly confesses that this Court's decree upholding the reduced rate in its prospective operation is just and correct. The main idea now entertained by Appellant seems to be to salvage something—no matter how little—out of the case. The necessary implication from this implied admission is that the 55c rate set by the Commission is, *in its average operation, prospectively,* non-confiscatory.

If the 55c rate, in its *average operation* over a reasonable period of years, be non-confiscatory, as Appel-

lant has impliedly confessed it to be, then an inescapable corrollary is that the 55c rate in its *average operation* over a reasonable period of years from and after January 1, 1932, must likewise necessarily be non-confiscatory. Appellant's contention is only that for the doubly subnormal years 1932 and 1933, considered alone and apart from other normal or better years, the rate is confiscatory. What Appellant really should say is, that the yields for those years are *below the average*. And the average yield under the 55c rate not only has not been proved by clear and convincing evidence to be confiscatory but has been shown to be both above the line of confiscation and above the line of reasonableness.

This Court judicially knows that, due to many varying conditions such as temperature fluctuations, and fluctuations of operating revenue from varying economic conditions, and due to the varying exigencies of operating expense, the net revenues of any public utility, more especially those of a natural gas utility, must necessarily fluctuate widely from year to year; and the only fair, equitable and reasonable basis upon which to compute the actual return, or the fair return, being enjoyed by such a natural gas utility is necessarily an average over a reasonable spread of years.

This Court has many times approved the adoption of an average rate of return over a reasonable spread of years as a test for the exercise of *prophecy* by the rate-fixing body and by reviewing courts.

The only question which Appellant now raises is whether or not the Court should apply a like test over

a spread of years including two subnormal years of actual experience—such actual experience not being under the 55c rate but under the prevailing 75c rate, voluntarily fixed by the utility in the first instance, and by its action continued in existence during the period in which the reduced rate *should have been* in actual operation for a reasonable trial or test period, but during which its operation has been superseded and suspended by the voluntary and self-serving action of the utility itself, adopted of its own will and volition, and during a period for which the City and the Commission and the consuming public had no means by which they could constitutionally suspend the operation of the 75c rate which the utility has chosen to defend as being the minimum rate constitutionally valid, and legally just and reasonable, both before the legislative bodies and the judicial tribunals of the land.

Thus, it becomes very plain that what the Appellant is asking this Court to do is, not simply to give to the Fourteenth Federal Amendment such an interpretation as will permit the utility to earn only a *non-confiscatory rate of return*, but such an interpretation as will permit it, the utility, to earn an average rate of return, year in and year out, *very substantially above a non-confiscatory average rate of return.*

This position becomes increasingly plain when we point out that what the Appellant is contending for is a holding by this Court that the net rate of return *must never be permitted, even for a single twelve months' operating period*, to fall below *what it contends* is the line of confiscation.

Stated in plainer terms, this is a contention that the utility must be permitted *always to take advantage of all of the fluctuations of net revenue from year to year above the average*, but that the Fourteenth Federal Amendment inhibits the imposition upon the Company of the correlative duty of accepting also *the fluctuations of net revenue from year to year below the average.*

If such a rule were adopted by this Honorable Court, the inevitable net result of it in average operation over a period of years would be, not that the Federal Fourteenth Amendment guarantees to the utility merely a non-confiscatory rate of return, but that it insures to the utility an *average* rate of return far above the line of confiscation, and even above the line of reasonableness.

Stripped of all fancy verbiage and sophistry, the Company's contention is simply that, because under its *interpretation* of the evidence its net rate of return may have fallen, for 1932 and 1933, something below the *average* net rate of return of 7 per cent aimed at by the Commission as reasonable, that the reduced rate has necessarily been *confiscatory*, within the meaning of the Fourteenth Federal Amendment, during the years 1932 and 1933.

The plain truth is that because of abnormalities of temperatures and of economic conditions, and because of the deliberately adopted policy of the Company of alienating its industrial consumers in Laredo by gross discriminations as between Laredo, Nuevo Laredo and other points in Mexico, and because of the uncon-

scionably inflated rate base and depreciation requirements and operating expense accounts and rate of return claimed by the Company before the legislative and judicial bodies, the net rate of return enjoyed by the Company—not under the reduced rate, but under its old rates—has for 1932 and 1933 only fallen *below the average*—and it is inevitable that in the years subsequent to 1933 these deficiencies of net revenue, if indeed they be deficiencies at all, will be adequately compensated for by the fluctuations of net revenue, *above the average*, certain to occur.

Appellant, in its Petition for Rehearing (p. 3) mentions a purported opinion of the Attorney General of Texas which, it is said, holds that the provisions of Article 6058, R. C. S. Tex. 1925, requiring the Commission to dispose of the Company's appeal within 60 days after its lodgment, are merely directory and not mandatory. Counsel do not give the date of any such opinion nor quote the language of same, verbatim or in substance, and we do not even know of the existence of such an opinion.

Moreover, this Court is not required to take judicial notice of, or to be bound by, opinions of the Attorney General of Texas, and certainly no such opinion is in evidence in the record.

When we look at the terms of Article 6058, alone, we see that the Commission is required to dispose of each appeal within 60 days after its perfection, *unless the complaining utility consents in writing* that its pendency may longer be continued. Appellant does not show, however, that such delay was not acquiesced in by its own written consent in accordance with the

terms of the statute, and certainly no showing is made that such delay was brought about by the City or the consumers, or the Commission.

After all, it was the *utility* who suspended the operation of the city ordinance rate by voluntarily giving its bond with the conditions prescribed by statute and by the Commission, and this bond was expressly conditioned that it (the utility) would refund to the consumers all amounts collected in excess of the rate which should finally be held to be just and reasonable. The 55c rate has now been finally held, by the judgment of the state courts to be "just and reasonable" as per the condition of the bond, and by the judgment of this Court to be non-confiscatory. We see no unconstitutionality nor unjustness in these judgments.

We respectfully submit, therefore, that the Petition for Rehearing should be denied.

Respectfully submitted,

WILLIAM MCCRAW,
Attorney General of Texas

ALFRED M. SCOTT,
Assistant Attorney General

EDWARD H. LANGE,
Laredo, Texas
Attorneys for Appellees

p. 14.

SUPREME COURT OF THE UNITED STATES.

No. 13.—October Term, 1937.

United Gas Public Service Company, Appellant, *vs.* State of Texas, Mrs. Miriam A. Ferguson, former Governor of Texas, et al.	Appeal from the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

[February 14, 1938.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant, United Gas Public Service Company, challenges the validity of a rate fixed by the Railroad Commission of Texas for natural gas supplied by appellant for domestic uses in the City of Laredo.

The City Council of Laredo, on December 15, 1931, enacted an ordinance fixing gas rates which included a rate of 40 cents per 1000 cubic feet for domestic consumption, with a provision for a discount of 10 per cent. on payment of bills within ten days, the ordinance to become effective on January 1, 1932. The rate had previously been 75 cents per m. c. f. with a 10 per cent. discount for payment within ten days. The Texas Border Gas Company, which was supplying natural gas to consumers in Laredo, filed an appeal with the Railroad Commission and posted the required supersedeas bond in accordance with the provisions of Articles 6058 and 6059 of the Revised Civil Statutes of Texas (1925).[1] The

[1] "Art. 6058. *Appeal from city control.*—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal *de novo*. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall

condition of the bond was that the Company should refund to the City for the benefit of consumers any excess of rates collected "over and above the rates and charges that shall be finally determined to be a fair and reasonable return upon the value of its property used and useful in supplying natural gas and natural gas service to the City of Laredo".

Prior to the hearing before the Commission, the South Texas Gas Company, which owned and operated the transmission properties and transported the gas sold to the Texas Border Gas Company at the Laredo city gate, was made a party to the proceeding. The Texas Border Gas Company applied to the City for an increase of rates and, because of the City's failure to act, took an appeal to the Commission as the statute provided. The two appeals were consolidated. The United Gas Public Service Company, a Delaware corporation, entered its appearance on both appeals alleging that it had acquired the properties of both companies. The Commission, by order of June 13, 1933, fixed a rate of 55 cents per m. c. f. with a penalty of 10 per cent. for non payment within ten days, and the order was made retroactive to January 1, 1932. 2 P. U. R. (N. S.) 503.

The United Gas Public Service Company then brought suit in the District Court of the United States for the Southern District of Texas to restrain the enforcement of the Commission's order. On July 26, 1933, the State of Texas, the members of the Commission and the City instituted the present suit in the District Court of Travis County in the nature of an appeal under Article 6059[2] for

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determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission.

"Art. 6059. *Appeal from orders.*—If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them".

[2] See Note 1.

the purpose of protecting the jurisdiction of the state court and of enforcing the Commission's order if determined to be valid. The state court thereupon stayed all proceedings by the Commission, or by the officials of the State and City, to enforce the Commission's order until the determination of the suit. On August 1, 1933, the District Court of the United States composed of three judges (28 U. S. C. 380) stayed all proceedings in that court pending the final determination of the suit in the state court. Subject to the order of the state court, the Company has continued to charge its 75 cent rate.

The trial in the state court resulted in a judgment on April 24, 1934, which sustained the Commission's order of June 13, 1933, except so far as its rate was made retroactive to January 1, 1932, that part of the order being held invalid. The Company then appealed to the Court of Civil Appeals which rendered its judgment on October 30, 1935, reforming the judgment of the trial court so as to declare the retroactive portion of the Commission's order valid and enforceable and affirming the judgment as thus modified. 89 S. W. (2d) 1094. The Supreme Court of the State refused writ of error.

A motion to dismiss the appeal taken to this Court from the judgment of the Court of Civil Appeals was denied. 301 U. S. 667. Upon hearing, the Court ordered reargument, noting that it especially desired to hear the parties on the state of the evidence as to the effect of the application of the Commission's rate to the years 1932 and 1933, that is, as to the revenues and expenses for those years on that basis, and as to the effect upon the rights of the appellant, with respect to those years, of the bond given on its appeal to the Commission. November 8, 1937. — U. S. —. Reargument has been had accordingly.

Appellant, invoking the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution, contends that in the state proceedings it has been denied procedural due process and also that the prescribed rate is confiscatory.

The proceedings before the Commission and its rulings. The Commission gave a full hearing. It received voluminous evidence offered by appellant and the City as to every phase of the controversy and their counsel were fully heard in argument. The opinion of the Commission reviews the history of the utility from the time

that the Texas Border Gas Company received its franchise from the City in 1909. The Commission found the interrelation of the companies concerned and that the present appellant, which had become the owner of the properties of the former operating companies, was itself a unit of the United Gas System. It was in view of the "interrelated company operation and ownership", that the gathering, transmission and distribution properties used and useful in serving the city of Laredo were valued as a combined property. As consumers in a number of other communities within the Laredo area were also served, it became necessary to allocate to Laredo its appropriate proportion. Methods of allocation were submitted by the respective parties and the Commission adopted a weighted average per cent., which had been taken by the City's engineer as an approximate mean between two percentages used by the Company's engineer, as coming the closest to a fair and correct allocation. Evidence of historical cost and of reproduction cost new less depreciation was submitted. The Company's appraisal on the basis of reproduction cost new, less depreciation, was $1,231,601. The appraisal of the City's engineer on the same basis was $810,698. The City adduced evidence showing the depreciated historical cost as of July 31, 1932, to be $709,991.23.

The Commission for the purpose of its valuation divided the properties into three groups, (a) gathering system, (b) transmission system, and (c) distribution system. The Commission stated and considered the respective appraisals of each group. While the City included an allowance of $124,668 as the depreciated cost of that portion of the transmission lines extending from Pescadito Junction to the Jennings Field, a distance of about 26 miles, the Commission found "that this line was used only one day during the twelve months' period ending July 31, 1932, in transporting gas to Laredo", and further that "the condition of this line is such that it could neither safely nor profitably transport the necessary volume of gas to the City". The Commission concluded that, if the Company's properties were reproduced, that section of the line would not be necessary.

The Commission then considered the questions of working capital, of going concern value and of accrued depreciation. After referring to the respective estimates, the Commission decided that "the over-all per cent. condition" of the properties was 78 per cent.

The Commission's conclusion was that the total "present fair value" of the properties was $885,000. The Commission said:

"In arriving at a decision and making an order herein that is deemed by the Commission to be just and reasonable, we have carefully and fully considered all the evidence presented and all the facts and circumstances reflected by the record herein; and upon giving due consideration to all the elements of value inhering in the property involved in this proceeding, have valued the Company's properties as an operating concern, with business attached; have made ample allowance for materials and supplies, working cash, and general overheads; and have included in such value the Pescadito-Jennings Transmission Line and the West Jennings Gathering System (although the record clearly discloses that these last two named property items are neither being used, nor are they necessary as standby equipment) and we find the present fair value of the properties of the Company used, and useful in the gathering, transporting and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000".

The Commission fixed the annual depreciation rate which should be allowed at 3 per cent. The Commission also found that an annual rate of return of 7 per cent. on the present value of the properties was adequate.

With respect to "available revenue", the Commission said that the Company had presented a "setup" of operating revenues and expenses for the twelve months' period ending July 31, 1932, only. On the other hand, the City had presented a similar "setup" covering the years ending June 30, 1929, 1930 and 1931, and for the year ending July 31, 1932—a period of four years. The Commission was of the opinion that the one year ending July 31, 1932, should not be taken as a test period. It was believed to be a matter of common knowledge that "from a general business standpoint the year 1932 was the worst year since 1929". The City's exhibit was deemed to show that the fiscal year 1931 was also subnormal, and the Commission concluded that neither that year, nor an average of those two years, should be taken as an adequate test. The Commission also thought that it would be unfair to the Company to take the year 1930 or an average of the three years, 1930, 1931 and 1932, as it appeared that the year 1930 was the best year in point of gross revenues that the Company had experienced since 1928. On the whole, the Commission thought that justice would be done if an average of revenues and expenses for the four fiscal years, 1929, 1930, 1931 and 1932, should be taken as the test

period for the computation upon which a fair return should be predicated.

It had been stipulated by the parties at the outset that a rate of five cents per m. c. f. was a fair and reasonable price of gas at the well. While the Commission did not make specific findings with respect to revenues and expenses for the years which it took as a basis, it did reject certain allowances for which the Company contended. As to an allowance of a gathering charge in relation to gas purchased from the Carolina-Texas field, the gathering lines in which were the property of an affiliate, the Commission allowed a charge of one-half of one per cent. instead of the one per cent. which the Company sought. With respect to items not particularized by the Commission, we think that it substantially appears from its opinion that the Commission, save as to the items disallowed, accepted the City's exhibit which covered the revenues and expenses for the four-year period and stated separately the items contained therein which were deemed to be questionable.

The Commission found the rate, for all domestic uses, of 55 cents per m. c. f., the minimum bill per user per month to be one dollar and the penalty for non-payment within ten days to be 10 per cent., to be "just and reasonable". The Commission found that its application would produce "a net return in excess of seven per cent (7%) per annum on the present fair value of the properties, after provision for operations and reserve for depreciation". The Commission ordered that the rate should be effective from and after January 1, 1932, and that there should be refunded to the City of Laredo for the benefit of domestic gas consumers the difference between the amount collected under the existing rate and the amount that would have been due by consumers under the Commission's order.

The proceedings in the District Court of Travis County.—The trial was essentially *de novo*. It was begun in March, 1934, and was had before a jury, a motion by the appellants to have the jury discharged and the cause determined by the court being overruled. The entire record before the Commission was placed in evidence and additional testimony was introduced as to property values, depreciation reserve accrual, revenues, expenses, rates of return, etc. It appears that the evidence was brought as near as possible to the time of trial. The evidence as to revenues and expenses which

appellant adduced again related to the year ending July 31, 1932, and the years 1932 and 1933, and the appellees introduced evidence for the four-year period, to which they had addressed their computations before the Commission, and also for the year 1933.

At the close of the evidence, appellant moved for a peremptory instruction in its favor and also for the suspension of the Commission's order for the years 1932 and 1933. These motions were overruled. Appellant then moved to have the case submitted to the jury on "special issues" and not upon a "special charge". The court stated that in its view its charge was on "special issue" and hence complied with the request. The appellant then moved to submit to the jury certain special issues which were separately stated; that is, that the jury should make separate findings as to the values of component parts of appellant's property during the years 1932 and 1933, respectively; also as to the amount of the necessary materials and supplies and cash working capital, and the amount which should be allowed for "going value", and as to the average cost of gas at the well mouth and the proper annual allowance for the depreciation reserve. These requests were refused.

The trial court submitted to the jury a single special issue as follows:

"Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question 'yes' or 'no' ".

The court prefaced that submission with the following definitions and instructions:

That by "fair return" was meant that the appellant was entitled to earn a rate "on the present fair value of its property which it employs for the convenience of the public "equal to that generally being made at the same time within the same general part of the country upon investments in other business undertakings which are attended by like risks and uncertainties". That the rate of return should be reasonably sufficient "to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise money necessary for the proper discharge of its duties".

That by "fair value" was meant "the reasonable worth of the property at this time that is being used and useful in the public service". That by "used and useful" was meant that it embraces all the property "actually being used" in that service and also such property as was reasonably necessary to permit "continuous and efficient service".

That by "operation expenses" was meant such expenses as were incurred in the operation of appellant's property in furnishing gas to the people of Laredo.

That by "annual depreciation" was meant the amount per annum that was reasonably necessary to compensate for the wearing out and any necessary replacements and retirements of appellant's property.

That by "reproduction cost new" was meant "the cost to the owner under the conditions which may reasonably be expected to exist if the property were to be reproduced new".

That by "going value" was meant the added value of appellant's property as a whole, used and useful for serving the City, over the sum of the values of its component parts, by reason of the fact "that it is an operating, assembled and established property, functioning with a trained personnel, a co-ordinated plant and property, with customers attached, and its business established".

Referring to the findings of the Commission, and the transcripts of evidence and exhibits, which were before the Commission and had been introduced in evidence, the court told the jury that the same might be considered for the purpose of assisting the jury in determining whether the Commission's order was unreasonable and unjust and for no other purpose. The court concluded its charge with the following instructions:

"You are instructed that the burden of proof is upon the defendant, United Gas Public Service Company, to show by clear and satisfactory evidence that the rate promulgated by the Railroad Commission in its said order of June 13, 1933, is unreasonable and unjust as to it.

"You are further instructed that in determining your answer to said issue in the light of all the evidence introduced in this case the defendant, United Gas Public Service Company, is entitled to receive a fair return at this time on the present fair value of its property that is used and useful in the public service after first deducting all necessary operating expenses and a fair and reasonable amount for the annual depreciation of said property, and that in considering what is a fair value of said property you will take into consideration all elements of value that have been introduced

in evidence before you, including reproduction cost new of said property and the amount of going value (if any) that inheres in said property.

"By 'unreasonable and unjust' is meant that the rate prescribed and adopted in the said order of the Railroad Commission was so low as to have not provided for a fair return upon the fair value of defendant's property used and useful in supplying the service furnished by the United Gas Public Service Company to the inhabitants within the city of Laredo, Texas".

Appellant took exceptions to the court's charge and to the refusal of its requests.

The jury answered the special issue in the negative. Appellant's motion for judgment *non obstante veredicto* was denied and judgment was entered.

The court in its judgment ruled that the provision in the Commission's order requiring the refund of the excess collections over the Commission's rate was a separable part, and as the court was of the opinion that the Commission's retroactive application of its rate to January 1, 1932, and the provision for a refund, were invalid, that part of the Commission's order was set aside without prejudice to the right of the City to recover the excess collections, should that provision be sustained on appeal. The judgment then enjoined appellant from making any charge in excess of the Commission's rate, with direction for supersedeas pending appeal upon the filing of a described bond. A motion for a new trial, in which appellant again stated its objections to the court's rulings, was denied.

The ruling of the Court of Civil Appeals.—The appellate court reached the conclusion that appellant had not only failed to establish its claim for reversal, and for judgment in its favor, but that "when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55¢ rate order was either unjust and unreasonable or confiscatory". In that view, the court added, "all questions of practice", presented by appellant, "go out of the case".

The court noted the fact that the Commission had reluctantly included in the valuation of the property the items of $124,688, representing the Pescadito-Jennings transmission pipe line, and also

had "included the West Jennings Gathering System at a value of $10,342", although the Commission found that these "two property items are neither used nor are they necessary as standby equipment". The court also said that there was evidence before both the trial court and the Commission which tended to show "the fair value of appellant's property to be about $700,000; and that a 2% annual accrual for depreciation would be fair and reasonable". Referring to the evidence as to operating revenues and expenditures, the court set forth tables based on the computations of an expert accountant of the appellees showing average net revenues for the four-year period and the year 1933. These calculations were on the basis of appellant's existing 75 cent rate. The court thus stated the criterion which it applied in overruling appellant's contentions:

"The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years; the future being gauged as nearly as possible by the past experience. . . . It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate. And while the equal protection, the due course, and the due process clauses of the fundamental laws of both state and nation guard against the taking up, or compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right under all conditions and circumstances to have a return upon the value of the property so used. If actual experience for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may then be changed through proper channels".

Proceeding on this principle, the court said:

"In the instant case appellant has continuously charged and collected the 75¢ rate; hence no actual test has been made under the lower 55¢ rate. An actual test of the lower rate might have resulted in a larger return by bringing about an increase in appellant's business, and manifestly the court would not be warranted in holding that the lower rate was either confiscatory, or unjust

and unreasonable, as a matter of law, in advance of an actual test of the rate; . . . So when the property valuation is pared down to this lowest valuation (about $700,000), and doubtful items of expenses are deducted, the net revenues received by appellant under the 75¢ rate for the year ending December 31, 1933, would afford more than 11% return. And calculations based on the $700,000 valuation and the estimated difference in revenues between the 55¢ rate and the 75¢ rate, show a return of more than 7% for the year 1933. But even if the lower rate did not or would not yield a return of 7% for the year 1933, this court would not be warranted in enjoining the enforcement of the rate, because the test period was too short, no actual test was made under the lower rate and the undisputed evidence showed the year to be abnormal".

In concluding its opinion, the court held that the trial court erred in its ruling that the retroactive provision of the Commission's order was invalid. The appellate court said that on the appeal to the Commission to review the City's ordinance, the Commission was authorized to suspend the rate fixed by the City and to require the utility to give a bond "on such terms and conditions as the Commission may direct". The trial court had refused to receive the bond in evidence but it appeared in the record. The appellate court quoted its condition and noted that the supersedeas bond filed on appeal to that court was similarly conditioned. The court held that the Commission had the power upon determining that the rate fixed by the City's ordinance was unreasonable to "substitute its own just and reasonable rate therefor, and to make it effective as of date of the City ordinance rate for which it was substituted".

The Court of Civil Appeals then entered judgment sustaining the retrospective and refund provision of the Commission's order and affirming the judgment of the trial court as thus modified.

First.—The question of procedural due process.—There is no ground for holding that appellant did not have a fair hearing before the Commission. Appellant's evidence was received and weighed; its arguments were heard and considered. The Commission made findings as to the value of appellant's property, the permissible allowance for depreciation and the rate of return. The amounts of revenues and expenses for the four years which the Commission took as a basis sufficiently appear, as already stated, from the City's exhibit to which the Commission referred in its opinion. The estimated amount of revenue at the Commission's rate appears from a simple calculation, applying the rate of return to the rate base after the annual allowance for depreciation. In

the Commission's procedure there was no lack of the due process required by the Federal Constitution. *Railroad Commission of California* v. *Pacific Gas and Electric Company*, decided January 3, 1938, — U. S. —; *Los Angeles Gas Company* v. *Railroad Commission*, 289 U. S. 287, 304, 305; *West Ohio Gas Company* v. *Public Utilities Commission (No. 1)*, 294 U. S. 63, 70.

With respect to the proceedings in the state courts, appellant urges that the case was not tried and determined as required by state law, and we are referred to the state statutes and the decisions of the Texas courts as to the proper procedure in the trial court and on appeal. It is not our function, in reviewing a judgment of the state court, to decide local questions. We are concerned solely with asserted federal rights. The final judgment of the state court in the instant case must be taken as determining that the procedure actually adopted satisfied all state requirements. *John* v. *Paullin*, 231 U. S. 583, 585; *Lee* v. *Central of Georgia Rwy. Co.*, 252 U. S. 109, 110; *Central Union Co.* v. *Edwardsville*, 269 U. S. 190, 194, 195.

As to the requirement of due process under the Federal Constitution, appellant contends that it was denied the independent judicial judgment upon the facts and law to which it was entitled. See *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287; *Bluefield Water Works Co.* v. *Public Service Commission*, 262 U. S. 679; *State Commission* v. *Wichita Gas Co.*, 290 U. S. 561, 569; *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 49. The proceeding in the state court undoubtedly purported to afford an independent judicial review. As the Court of Civil Appeals of Texas said in the instant case, the trial of the issues whether the rate was unreasonable or confiscatory was "*de novo*". Appellant itself recognizes that the trial "was essentially *de novo*, new and full testimony being introduced as to property value, depreciation reserve accrual, revenues, expenses, rates of return, etc". Appellant's evidence was received by the trial court and appellant's contentions were heard. The question whether due process in the court's procedure was accorded thus comes to the mode of trial; that is, (1) the propriety of a trial by jury, and (2) the manner in which the issues were submitted to the jury.

We do not fail to appreciate the difficulty in presenting to a jury the complicated issues in a rate case, especially where, as here, the evidence is voluminous, embracing the conflicting valuations of experts and a host of details in appraisals and in accounts of opera-

tions, with elaborate tabulations. Even in trials of such cases without a jury the service of a special master for the analysis of the details in evidence with respect to values and return has been found advisable. We have had abundant occasion to become familiar with the difficulty of such determinations. But we are not dealing with questions of policy as to procedure. The State is entitled to determine the procedure of its courts, so long as it provides the requisite due process. And on that question we have never held that it is beyond the power of the State to provide for the trial by a jury of questions of fact because they are complicated. Cases at law triable by a jury in the federal courts often involve most difficult and complex questions, as, for example, in patent cases at law presenting issues of validity and infringement. See *Tucker* v. *Spalding*, 13 Wall. 453, 455; *Keyes* v. *Grant*, 118 U. S. 25, 36, 37; *Royer* v. *Schultz Belting Co.*, 135 U. S. 319, 325; *Coupe* v. *Royer*, 155 U. S. 565, 578, 579. Most difficult questions of fact in protracted trials, with much conflicting expert testimony, are not infrequently presented in criminal cases triable by jury. The issue of life or death may be decided in such a case. We have held that a State may modify trial by jury or abolish it altogether (*Walker* v. *Sauvinet*, 92 U. S. 90; *Maxwell* v. *Dow*, 176 U. S. 581; *Frank* v. *Mangum*, 237 U. S. 309) but never that the time-honored method of resolving questions of fact by a jury must be abandoned by a State under compulsion of the Federal Constitution. And we find no warrant for such a ruling now.

The question remains as to the manner in which the instant case was submitted to the jury. The special issue was submitted whether the Commission's rate was "unreasonable and unjust as to defendant". This submission, under the court's instruction in relation to the import of the phrase "unreasonable and unjust", covered, as appellant conceded at this bar, the issue whether the rate was confiscatory. Appellant did not ask to have the issue of confiscation submitted by the use of that precise term. The question then is as to the denial of the submission of the particular issues which appellant requested and as to the character of the instructions given by the trial court.

The special issues which appellant requested were for findings as to the value of component parts of appellant's property during the years 1932 and 1933 and as to the amounts necessary to cover material and supplies, working capital, going value, and certain other items. It will be observed that these special issues did not

embrace all the questions which the jury should consider, as for example, the questions of operating revenues, operating expenses and return. If trial by jury was permissible, as we hold it was, we cannot say—putting aside questions of correct practice under the state law not reviewable here — that appellant was entitled under the Federal Constitution to have special issues framed and submitted to the jury, much less that appellant could demand that the particular items it mentioned should be singled out and specially passed upon. We consider that question in the light of the total power which the State possesses to provide for jury trials, and for the manner of conducting them, and not with respect to any alleged limitations imposed by state statutes. See *Castillo* v. *McConnico*, 168 U. S. 674, 683.

We have stated at some length, and need not repeat, the general instructions given by the trial court. The jury were instructed as to the right of appellant to receive a fair return on the fair value of its property that is used and useful in the public service and that the jury should take into consideration all elements of value that had been introduced in evidence, including the reproduction cost new of the property and the amount of going value, if any, that inhered in it. The court defined the terms that it used, such as "fair return", "fair value", "used and useful", "operation expenses", "annual depreciation", "reproduction cost new" and "going value", and the court explained what would constitute an adequate rate of return. No instructions were given which could be taken in any sense to conflict with appellant's federal right; on the contrary, the jury, if it duly followed the instructions, could not but enforce that right.

Appellant, while objecting to the charge upon grounds that are not impressive, did not submit and request amplified instructions which might have aided the jury's consideration. Appellant was apparently content to object to the pertinent instructions that were given, and to a general charge, and to stand upon its limited requests as to special issues.

Upon such a record we are unable to hold that there was a denial of federal right so far as procedural due process is concerned.

Second.—The question of confiscation.—We have said that our inquiry in rate cases coming here from a state court "is whether the

for the period to which the evidence before the Court appropriately related and not simply of the years 1932 and 1933.

action of the state officials in the totality of its consequences is consistent with the enjoyment by the regulated utility of a revenue something higher than the line of confiscation". *West Ohio Gas Company* v. *Public Utilities Commission (No. 1), supra.* This Court will review the findings of fact by a state court (1) where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it, and (2) where a conclusion of law as to a federal right and findings of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts. *Kansas City Southern Rwy. Co.* v. *Albers Commission Co.*, 223 U. S. 573, 591; *Northern Pacific Rwy. Co.* v. *North Dakota*, 236 U. S. 585, 593; *Norfolk & Western Railway Co.* v. *West Virginia*, 236 U. S. 605, 609, 610; *Aetna Life Insurance Co.* v. *Dunken*, 266 U. S. 389, 394. We make that analysis, not to determine issues of fact arising on conflicting testimony or inferences, and thus to usurp the function of the state court as a trier of the facts, but to perform our own proper function in deciding the question of law arising upon the findings which the evidence permits. *Kansas City Southern Rwy. Co.* v. *Albers Commission Co., supra.*

Here, the issues of fact were determined in the trial court. Counsel agree that under the state practice the Court of Civil Appeals had no authority to make findings of fact. "Where the evidence is without conflict, it may render judgment. But where there is any conflict in the evidence on a material issue, it has no authority to substitute its findings of fact for those of the trial court". *Post* v. *State*, 106 Tex. 500, 501. The Court of Civil Appeals held not only that appellant had failed to make good its claim that it was entitled to judgment in its favor but that, having regard to the presumption in favor of the Commission's rate order and the clear and satisfactory proof required to overcome such presumption, appellant's evidence was insufficient as matter of law to show that the Commission's rate was confiscatory. The reasoning of the Court of Civil Appeals was directed to the decision of those legal questions. Upon the issue of confiscation, the judgment of the trial court was affirmed and thus its finding of fact was not disturbed.

Separate questions are presented (1) as to the value of appellant's property and (2) as to its return from operations. As to the first, the Commission found the value to be $885,000. But the Commission stated that this valuation included property which was neither used nor useful. If it be assumed that the Commission in

the exercise of its legislative discretion might include that property in fixing a "reasonable rate", still appellant would not be entitled to its inclusion on the issue of confiscation. While the evidence as to value was conflicting, we are unable to conclude that there was not adequate evidence to sustain a finding that the total property used and useful, after making deductions for the portions not of that sort, was worth not more than $750,000.

Appellant complains that the Court of Civil Appeals based its conclusion upon a valuation of "$700,000" which appellant contends is inadmissible, and that the appellate court misapplied the rule as to the burden of proof in holding that the value must be "pared down unsparingly" to that amount. But we must distinguish "between what was said and what was done", between "dictum and decision", between reasoning and conclusion. *Dayton Power & Light Co.* v. *Public Utilities Commission*, 292 U. S. 290, 298, 302. What the appellate court did was to affirm the judgment of the trial court and if, as we think, a valuation of appellant's property at $750,000 would have adequate support in the evidence, we need go no further in relation to that part of the case.

With respect to return from operations, the crucial question is whether appellant was entitled to have the rate for the future fixed with sole regard to the result of operations in the years 1932 and 1933, as appellant contends, or it was permissible to fix the rate upon a consideration of the returns for a number of years, that is, for the four years prior to July 31, 1932, as taken by the Commission, or for that period and the years 1932 and 1933, as shown by the evidence before the trial court. The Commission held its hearing in the latter part of 1932 and made its order in June, 1933. Apart from the question raised by the retrospective feature of its order, we think it manifest that in fixing its rate for the future the Commission was not limited to the results of operations for the year ending July 1932. Not only was that but a single year, but the Commission regarded it as an abnormal year and the propriety of its ruling in that respect is supported by common knowledge of economic conditions at that time. Similarly, the trial court, sitting in the spring of 1934, was not bound to limit its vision to the results of 1932 and 1933. What would happen in the future was necessarily a matter of prophecy. The Commission's rate had not been put into effect and in estimating what would be the consequence of the requirement the court was entitled to a reasonable

basis for prediction, especially in view of a contemplated emergence from a period of extreme depression. As the Court of Civil Appeals observed, the way was open to the appellant to seek a change in the rate on proof of actual experience. Of course, appellant was entitled to take its chances on appellate review of the trial court's judgment, but it cannot complain of the delay incident to that review and its case must be judged as it stood before the trial court. We hold that there was no error in taking into consideration the results of appellant's operations for the years 1929 to 1933, inclusive, according to the evidence produced in the trial court, and in determining the issue of confiscation in the light of the average return thus shown.

Appellees introduced evidence tending to show that appellant's operating revenues, calculated on the basis of the 55 cent rate and after deducting the operating expenses deemed to be allowable and the annual allowance for depreciation, for the years ending June 30, 1929, 1930, and 1931, and July 31, 1932, yielded net amounts of $106,815.36, $123,293.02, $91,554.04, and $48,556.88, respectively, and for the year 1933, $46,371.85. Appellant contends that on the basis of the 55 cent rate its net operating revenue for 1932 would have been but $10,086.25, and for 1933, $18,408.39. We do not think it necessary, so far as concerns the validity of the Commission's rate in its prospective application, to extend this opinion by stating in detail the contentions *pro* and *con* as to these estimates, questions which largely relate to the permissible allowances for operating expenses. We are satisfied that if we consider the results of appellant's operations for the entire period, 1929 to 1933, the evidence was adequate to support the judgment of the trial court.

Third.—With respect to the question of the validity of that part of the Commission's order which made its rate retroactive to January 1, 1932, considered in the light of the evidence relating to the intervening period and of the bond given on the appeal to the Commission from the City's ordinance, this Court is equally divided and the judgment of the Court of Civil Appeals in that relation is accordingly affirmed.

Judgment affirmed.

Mr. Justice Reed took no part in the consideration and decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 13.—October Term, 1937.

United Gas Public Service Company, Appellant, *vs.* State of Texas, et al.	Appeal from the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

[February 14, 1938.]

Mr. Justice Black, concurring.

Although I concur in sustaining the judgment of the court below, I do not agree that the rights of this Delaware corporation doing business in Texas are derived from the Fourteenth Amendment[1] or that the Fourteenth Amendment deprives Texas of its constitutional power to determine the reasonableness of intra-state utility rates in that State.

Even applying the Fourteenth Amendment under the prevailing doctrine, I do not believe that this Court (apart from procedural questions) is called upon to do more than determine the sole question of confiscation. Any indication by this Court of the value of the company's property will unjustifiably affect and control subsequent valuations for rate making purposes.[2]

The record discloses a striking absence of satisfactory evidence of the actual cost of the company's properties; its funded indebtedness; the actual investments of stockholders in the company; profits in past years; and the percentage of past profits to actual investment. These matters have important bearing upon the issue of confiscation. There is evidence that only a part of the company's depreciation reserve, accumulated over and above expenditures for repairs and property maintenance, reaches approximately $500,000 —or over 40% to 70% of the various estimated values of all the

[1] See dissent filed in Conn. Life Ins. Co. *v.* State of California, decided January 31, 1938.

[2] See McArdle *v.* City of Indianapolis, 272 U. S. 400; McCart *v.* Indianapolis Water Works, decided January 3, 1938; 13 F. Supp. 110; 89 F. (2d) 522, 525, 526.

company's assets. In addition appellant has not shown beyond a reasonable doubt that there is an actual investment of stockholders —over and above the amount of borrowed capital—which could be confiscated.[3] Appellant has obviously failed to establish all the elements necessary to prove beyond a reasonable doubt[4] that the rate fixed by the State will result in confiscation of its property.

OPERATING EXPENSES.—The record shows that appellant is one of many corporate associates and affiliates connected with the Electric Bond and Share Company and the United Gas System. Practically all operating expenses appeared as inter-company charges among these associates, affiliates, etc. Under these circumstances confiscation cannot be established merely by proof that the books of appellant show alleged expenditures purporting to have been made by or through its affiliates, associates, etc. The strong presumption of the validity of these rates—fixed by a State—can be overcome only by proof that each expenditure, alleged to have been made or incurred by or through an associate or affiliate, was in fact so made or incurred and was fair and reasonable. Such proof was not made in this case. As an illustration, a witness testifying for the City said that it was impossible for him to ascertain proper operating expenses for the year 1933, because his examination was confined to the South Texas Border Gas Company and the South Texas Gas Company "and all I saw in support of these items was inter-company invoices, and I was not able or had no way of determining whether items were proper or not."

Since the major part of appellant's income is absorbed by associated companies in the name of "operating expenses" and by intercorporate transactions, the operations and expenses of these associates, affiliates, etc., are brought within the field of inquiry. Referring to intercorporate transactions of holding companies, subsidiaries, associates, affiliates, etc., this Court has said:

"It is urged that as these averments were uncontradicted they constitute, when taken with the facts previously stated, a prima facie case for the reasonableness of the rate charged. This might well be true were it not for the fact of unity of ownership and control of the pipe line and the distribution system. An averment of

[3] Cf. Chicago & G. T. Railway Co. *v.* Wellman, 143 U. S. 339; see dissent in McCart, case *supra*.

[4] Cf. San Diego Land Company *v.* Natural City, 174 U. S. 739, 754; Ogden *v.* Saunders, 12 Wheaton 213, 270.

negotiation and effort to procure a reduction in the wholesale rate means little in the light of the fact that the negotiators are both acting in the same interest,—that of the holding company which controls both. All of these facts so averred in the pleadings would be far more persuasive with respect to the propriety of the rate *if the parties were independent of each other and dealing at arm's length.* Where, however, they constitute but a single interest and involve the embarkation of the total capital in what is in effect one enterprise, *the elements of double profit and of the reasonableness of inter-company charges must necessarily be the subject of inquiry and scrutiny before the question as to the lawfulness of the retail rate based thereon can be satisfactorily answered.*

" . . . . The argument is made that the proofs demanded by the Commission will involve an extensive and unnecessary valuation of the pipeline company's property and an analysis of its business and that this burden should not be thrown upon appellant. Whether this is so we need not now decide. It is enough to say that in view of the relations of the parties, and the power implicit therein arbitrarily to fix and maintain costs as respects the distributing company which do not represent the true value of the service rendered, *the state authority is entitled to a fair showing of the reasonableness of such costs, although this may involve a presentation of evidence which would not be required in the case of parties dealing at arm's length and in the general and open market, subject to the usual safeguards of bargaining and competition.*"[5]

Not only did appellant fail to prove the reasonableness of its intercompany dealings, but it did not—as requested in open court—produce a *full* list of salaries paid by its associates, affiliates, etc. It is true that evidence did show that *some* of the officers of associates, affiliates, etc., received from $65,000 to $100,000 a year but there

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[5] Western Distributing Co. v. Public Service Commission of Kansas et al., 285 U. S. 119, 126, 127.

"Purchases are frequently made by a member or members of a system from affiliates or subsidiaries, and with comparative infrequency from strangers. At times obscurity or confusion has been born of such relations. There is widespread belief that transfers between affiliates or subsidiaries complicate the task of rate-making for regulatory commissions and impede the search for truth. *Buyer and seller in such circumstances may not be dealing at arm's length, and the price agreed upon between them may be a poor criterion of value.* Dayton Power & Light Co. v. Public Utilities Comm'n of Ohio, 292 U. S. 290, 295; Western Distributing Co. v. Public Service Comm'n of Kansas, 285 U. S. 119; Smith v. Illinois Bell Telephone Co., 282 U. S. 133." American Telephone & Telegraph Co. et al. v. United States et al., 299 U. S. 232, 239.

was no proof of the reasonableness of such salaries or of their effect upon appellant's local gas distribution expenses.

This Court has previously declared the importance of salaries in determining the question of confiscation in *Chicago G. T. Railway Co.* v. *Wellman,* 143 U. S. 339, 345. There it was said:

"Of what do these operating expenses consist? Are they made up partially of extravagant salaries; fifty to one hundred thousand dollars to the president, and in like proportion to subordinate officers? Surely, before the courts are called upon to adjudge an act of the legislature fixing . . . maximum . . . rates (for railroad companies) to be unconstitutional, . . . they should be fully advised as to what is done with the receipts and earnings of the company. . . . While the protection of vested rights of property is the supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discretion of any (railroad) corporation which may, by exorbitant and unreasonable salaries, or in some other improper way, transfer its earnings into what it is pleased to call 'operating expenses.'"

When a public utility chooses to pay out a large part of its "operating expenses" to corporate associates, affiliates, etc., these payments might conceivably be used to drain the operating company's income and to inflate the "operating expenses." Inflated operating expenses inevitably lead to inflated rates. Since affiliates, associates, etc., do not ordinarily deal at "arm's length" appellant had the burden of proving the fairness and reasonableness of all expenditures made or charged as inter-company transactions.

DUE PROCESS AND TRIAL BY JURY.—Appellant contended in the court below that *"the submission of this case . . . to a jury will deprive this defendant of that character of hearing and trial contemplated under the Constitution and laws of the United States and of the Constitution and laws of the State of Texas."* Appellant here further insists that over appellant's protest, the court below did submit the cause to a jury *"Despite the recognized inability of such a body to deal adequately with proof of that nature . . . , despite appellant's vigorous protest and efforts to extricate itself from this situation . . . ."*

The Constitution of the United States does not prohibit trial by jury, but the Seventh Amendment, judicially construed as a limitation on the Federal government,[6] provides:

[6] Barron v. The Mayor, etc., 7 Pet. at 247; Edwards v. Elliott, 21 Wall. at 557.

"In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved,* and no fact tried by a jury shall be otherwise reexamined in any court of the United States, and according to the rules of the common law."

This Court said in 1855[7] that "The words, 'due process of law', were undoubtedly intended to convey the same meaning as the words, 'by the law of the land' in *Magna Charta.*" Again this Court said:[8]

"When Magna Charta declared that no freeman should be deprived of life, etc., '*but by the judgment of his peers or by the law of the land*', it referred to a trial by twelve jurors. Those who immigrated to this country from England brought with them this great privilege 'as their birthright and inheritance' . . . The trial . . . by a jury of one's country, is justly esteemed one of the principal excellencies of our Constitution; for what greater security can any person have in his life, liberty or estate, than to be sure of not being divested of, or injured in any one of these, without the sense and verdict of twelve earnest and impartial men of his neighborhood?"

There is nothing in the letter or spirit of our Constitution or any constitutional amendment, which deprives a state of the right to submit issues of fact to a trial by jury. That Constitution indicates no preference for determination of facts by judges or masters appointed by judges. On the contrary, our Federal Constitution, the State Constitutions, and our national tradition demonstrate a well-established preference for trial by jury.

"One of the objections made to the acceptance of the Constitution as it came from the hands of the Convention of 1787 was that it did not, in express words, *preserve the right of trial by jury,* and that under it, *facts tried by a jury could be reexamined by the courts of the United States* otherwise than according to the rules of the common law. The Seventh Amendment was intended to meet these objections, *and to deprive the courts of the United States of any such authority.*"[9]

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[7] Murray's Lessee et al. *v.* The Hoboken Land and Improvement Co., 18 Howard 272, 276.

[8] Thompson *v.* Utah, 170 U. S. 343, 349, 350.

[9] Chicago, Burlington Railroad v. Chicago, 166 U. S. 226, 243.

Further, "Upon the reasoning in the case just referred to (*The Justices* v. *Murray*, 9 Wall. 274, 278) it would seem to be clear that the last clause of the Seventh Amendment *forbids the re-trial by this Court* of the facts tried by the jury in the present case. . . . Even if we were of opinion in view of the evidence that the jury erred in finding that no property right, of substantial value in money, had been taken from the Railroad Company, by reason of the opening of a street across its right-of-way, *we cannot on that ground, reexamine the final judgment of the State court. We are permitted only to inquire whether the trial court prescribed any rule of law for the guidance of the jury that was in absolute disregard of the company's right to just compensation.*"[10]

This cause was tried in the courts of Texas in accordance with regular court procedure applicable to such cases. The facts were submitted to a jury as provided by the constitution and laws of that State, and in harmony with the traditions of the people of this nation. Under these circumstances, no proper interpretation of the words "due process of law" contained in the Fourteenth Amendment, can justify the conclusion that appellant has been deprived of its property contrary to that "due process." In October, 1877, this Court in *Davidson* v. *New Orleans*, 96 U. S. 97, 105—in discussing the Fourteenth Amendment—said:

"But however this may be, or under whatever other clause of the Federal Constitution we may review the case, it is not possible to hold *that a party has, without due process of law* been deprived of his property, when as regards the issues affecting it, *he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case.*"

I concur in the affirmance.

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[10] *Id.*, 244-5.

SUPREME COURT OF THE UNITED STATES.

No. 13.—October Term, 1937.

United Gas Public Service Company, Appellant, *vs.* State of Texas, Mrs. Miriam A. Ferguson, former Governor of Texas, et al.	Appeal from the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

[February 14, 1938.]

Separate opinion of Mr. Justice McReynolds and Mr. Justice Butler.

Mr. Justice Butler and I are of opinion that the judgment under review should be reversed. We adhere to the doctrine announced in *Ohio Valley Co.* v. *Ben Avon Borough,* 253 U. S. 289, and often reaffirmed. When rates fixed for a public service corporation by an administrative body are alleged to be confiscatory the Federal Constitution requires that fair opportunity be afforded for submitting the controversy to a judicial tribunal for determination upon its own independent judgment both as to law and facts. Here such opportunity has been denied.

June 13, 1933, the Texas Railroad Commission directed appellant to observe a new schedule of rates. By bill presented to the United States District Court June 29, 1933, appellant challenged this action as confiscatory. July 26, 1933, the Commission began this proceeding in the state court by filing an original petition which, among other things, alleged—

"Notwithstanding defendant's remedies are adequate and complete in the courts of this State, and notwithstanding every constitutional and legal right to which it may be entitled is and will be fully safeguarded and protected in said court, the defendant, nevertheless, elected to and did, on or about the 29th day of June, 1933, file its bill of complaint in the District Court of the United States for the Southern District of Texas, Laredo Division, in a cause entitled, United Gas Public Service Company, plaintiff *v.* Lon A. Smith, et al., defendants, No. 32 in Equity, and being a cause wherein your defendant is plaintiff and wherein each and all of your plaintiffs are defendants, except the State of Texas. . . ."

"In said action in said United States District Court, United Gas Public Service Company alleges in substance and effect that the order entered by the Railroad Commission of Texas fixed and prescribed a rate confiscatory of its property used and useful in the public service, and alleged that said order is unconstitutional and upon said allegation [obtained] a temporary restraining order out of said court enjoining and restraining your plaintiffs and each of them (except the State of Texas) from compelling or attempting to compel your defendant to observe said order of said Commission."

"Plaintiffs allege that the defendant is attempting to evade the laws of this State and the lawful order of the Railroad Commission of Texas fixing and prescribing rates and charges for the distribution and sale of natural gas within the limits of the City of Laredo, and that in charging a rate in excess of that prescribed by the Railroad Commission, plaintiffs herein, and each of them, are suffering irreparable injury, and that there is no adequate remedy prescribed by the laws of this State which will protect the public interest involved and the rights of plaintiffs herein."

"Plaintiffs are desirous of having the constitutional questions involved in the attack being made by United Gas Public Service Company upon the Commission's order heard and determined in the courts of this State, and to that end desire this court to enter a stay of proceedings in accordance with the provisions of Section 380, Title 28, U. S. C. A.[1] to the end that all proceedings in the district courts of the United States will be stayed pending a final determination of this cause in the courts of this State."

"This action is filed in this court in the nature of an appeal under the terms of Article 6059, Revised Civil Statutes, but such appeal is not taken because the plaintiffs herein are dissastisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of this Court and its venue to hear and finally determine the matters in controversy and to enforce the said order if it should be determined to be valid upon final hearing."

The petition asked: That the defendant appear and answer; that upon final trial the plaintiffs have an appropriate judgment; that defendant be enjoined from charging any rates other than those

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[1] Sec. 380, Title 28 U. S. C. A.

"It is further provided that if before the final hearing of such application [to a federal court for injunction] a suit shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. . . ."

fixed by the Commission; also that an order issue staying further proceedings by the Commission pending the termination of this suit, &c.

July, 26, 1933, the state court entered a stay order as prayed. August 17, 1933, upon the Commission's application, the United States District Court ordered that all proceedings in that court be stayed, pending final action by the state court.

Under the compulsion indicated, appellant unwillingly appeared in the state court and filed an answer setting up its rights under the Federal Constitution. The matter was supposed to stand in that court for hearing *de novo*. Voluminous evidence was presented by both sides.

Notwithstanding appellant's definite objections and its duly presented requests for adequate instructions, a single issue was submitted to the jury. "Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company? Answer this question 'Yes,' or 'No.' ". The jury answered "No", and judgment affirming the Commission's order in part was entered.

The Court of Civil Appeals took the cause for review upon the record made in the District Court. The following excerpts from its opinion sufficiently indicate the reasons which moved it partly to sustain and partly to overrule the judgment of the trial court and finally to approve the Commission's action *in toto*.

"We have reached the conclusion that appellant not only failed to establish its claim for reversal and rendition of judgment in its favor, but that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55¢ rate order was either unjust and unreasonable or confiscatory. In view of this conclusion all questions of practice presented in 'Part II.' of the brief go out of the case."

"In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate."

"That in advance of any actual test of the practical result of the new rate, the court on appeal will not disturb the rate where it is based upon conflicting evidence as to valuations of property, or as to any other item used as a basis for the calculation of the rate; because to do so would merely substitute the findings of the court or jury upon conflicting evidence for that of the Commission, and would therefore permit the court to exercise the legislative function of ratemaking. R. R. Commission *v.* Shupee, 57 S. W. (2d), 295; affirming 73 S. W. (2d), 505. And that by 'resolving all doubts against' the appellant 'and using valuations pared down unsparingly,' there could have been no reasonable doubt in the judicial mind that the 55¢ rate was neither confiscatory nor unjust and unreasonable. Newton *v.* Consolidated Gas Co. 258 U. S., 165."

Considering the rules which the Court of Civil Appeals declared applicable to the trial quite evidently appellant had no adequate opportunity to submit the law and facts relevant to the controversy to a fair judicial tribunal for determination according to its own independent judgment.

A tribunal required to accept weighty presumptions against a defendant, resolve all doubts against it, pare down valuations to the utmost and refuse a judgment in its favor when the evidence is conflicting as to valuations or other important elements, could not reach an independent judgment in respect of the law and facts—could not arrive at a fair judicial determination. To us the proceedings in the state courts seem an empty show.